

466023

VOLUME V

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

In the Matter of: )  
 )  
GARY DEVELOPMENT CO., INC. )  
 )  
Respondent. )  
 )

Docket No. RCRA-V-W-86-R-45

Courtroom 302  
Lake County Courthouse  
400 Broadway  
Gary, Indiana

Tuesday, December 18, 1990

The above-entitled matter came on for further  
hearing, pursuant to adjournment, at 9:00 o'clock, a.m.

BEFORE: HONORABLE J.F. GREENE  
Administrative Law Judge

## APPEARANCES:

On Behalf of the Complainant, U.S.  
Environmental Protection Agency:

MARC M. RADELL, ESQ.  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street - 5CSTUB3  
Chicago, Illinois 60604

On Behalf of the Respondent:

WARREN D. KREBS, ESQ.  
Parr, Richey, Obremskey & Morton  
121 Monument Circle - Suite 500  
Indianapolis, IN 46204

I N D E XTESTIMONY

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
JONATHAN COOPER	861	893		
DAN MC ARTLE	916	931		
LAWRENCE HAGEN	936	954		

EXHIBITS

<u>EXHIBIT NUMBER</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>REJECTED</u>	<u>WITHDRAWN</u>
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Respondent's:

18	929	931
19	950	952

Complainant's:

23	---	936
31	865	875
32	879	880
33	881	936

1 THE COURT: On the record please.

2 Mr. Krebs, ready with your witness?

3 MR. KREBS: Well he has not arrived yet, Your  
4 Honor, the witness we had subpoenaed.

5 THE COURT: Yes.

6 MR. KREBS: Mr. Hagen served the subpoena.  
7 And it's our first one, so I know he was served.  
8 Perhaps he's just running a few minutes late.

9 THE COURT: Alright. Why don't we, if you  
10 have no objection, and I'm sure you don't, why don't we  
11 begin by taking out of order the case on rebuttal?

12 MR. KREBS: That's perfectly fine.

13 THE COURT: Mr. Radell?

14 MR. RADELL: I'd like to call Jonathan  
15 Cooper.

16 THE COURT: Mr. Cooper, be sworn please.  
17 Whereupon,

18 JONATHAN COOPER  
19 called as a witness herein, having been duly sworn and  
20 having testified, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. RADELL:

24 Q Mr. Cooper, you last testified in this matter

1 about three years ago. Has your position with EPA  
2 changed at all in the last three years?

3 A Essentially I perform the same duties that I  
4 did three years ago. Officially my title is now, I'm  
5 at a higher grade, and my title is Environmental  
6 Scientist.

7 Q Okay. Are you still the RCRA enforcement  
8 specialist for the Gary Development Company?

9 A Yes.

10 Q Alright. Have you had any additional job  
11 related training in the years that have lapsed?

12 A Sure. I've taken several one or three day  
13 courses that are offered regarding various subjects  
14 related to my duties.

15 Q Okay. Alright. When last you testified, you  
16 testified concerning shipments of hazardous waste to  
17 Gary Development Company from the Jones & Laughlin  
18 steel and U.S.S. Lead sites. Are you still familiar  
19 with the basic substance of that testimony?

20 A Yes I am.

21 Q Do you recall what documents you used to form  
22 the basis of that testimony?

23 A Yes. The basis of that was responses from  
24 both those companies to 3,007 information requests

1       which I sent to the companies.

2               Q     Okay. And what kind of documents did you  
3       receive in response to those requests?

4               A     The basis of our analysis was that the  
5       hazardous waste manifests or copies of hazardous waste  
6       manifests, and those copies that we received and  
7       entered into evidence previously were documents which  
8       had on there three addresses: One for the generator,  
9       transporter, and the disposal facility. And the  
10      signatures, the names on the signatures that were  
11      present on those copies that we submitted were of the  
12      generator and the transporter, but they did not have  
13      Gary Development's signature.

14              Q     Does EPA have any other copies of manifests  
15      from these companies showing that hazardous waste was  
16      sent to Gary Development Company?

17              A     Yes, we do now.

18              Q     How are these copies different from the ones  
19      that we introduced at the trial last time?

20              A     These copies have the signature of a  
21      receiving person at Gary Development on them. So we  
22      have three addresses and three names and signatures  
23      from the generator, transporter, and the disposal  
24      company.

1           Q     Okay. How did EPA come into possession of  
2 this later batch of manifests from Jones & Laughlin  
3 Steel?

4           A     EPA sent a letter to, I think it's called  
5 Broman, and requested that he send copies that had on  
6 there the Gary Development signature, as well as the  
7 generator and transporter, of course.

8           Q     Uh-huh. Do you know if any Certification of  
9 Authenticity accompanied these manifests?

10          A     Yes.

11          Q     Okay. Have you had the occasion to review  
12 this later set of manifests that have come in with a  
13 certification?

14          A     Yes. I've looked at each individual one and  
15 what I did is I took the original stack of hazardous  
16 waste manifests copies and from our 3,007 information  
17 request and I then took the ones that we received from  
18 Carl Broman, the certified copies that I matched up  
19 document number for document number, and stapled  
20 together each individual one to verify that all of them  
21 present.

22          Q     And were all of them present?

23          A     Yes they were.

24               MR. RADELL: Okay. Would you please mark

1       this for introduction? I believe that would probably  
2       be number 31.

3               THE COURT: I think so. I had 30 before.

4               MR. RADELL: Yeah, 30 and then that one was  
5       not introduced--

6               THE COURT: That's right.

7               MR. RADELL: --so that would go on 29. Yes,  
8       Complainant's number 31.

9                               (Whereupon, Complainant's  
10                              Exhibit 31 was marked for  
11                              identification.)

12                             (Pause.)

13       BY MR. RADELL:

14               Q       Could you please examine that document and  
15       tell us whether or not that's the manifest that you  
16       received from Jones & Laughlin with the accompanying  
17       certification?

18               A       This is them.

19               MR. RADELL: At this point, I would like to  
20       have this moved to introduce into evidence.

21               THE COURT: Mr. Krebs?

22               MR. KREBS: If I could have a moment? I have  
23       not seen the certification. He just now gave me a copy  
24       of it, so I looking at it.

1 (Pause.)

2 MR. KREBS: We do have objections to the  
3 introduction of this exhibit, which I think is number  
4 31, is that right?

5 THE COURT: Yes.

6 MR. KREBS: Some of the objections we made  
7 the last time when similar documents were tendered  
8 preliminarily into evidence in the hearing in September  
9 of '87. As the Judge will recall in this case under  
10 the pre-trial entry, the parties were to have exchanged  
11 all exhibits, and then to have updated all exhibits and  
12 exchange those in February of 1987 prior to the  
13 commencement of the trial in September of 1987.

14 We received, myself on behalf of the  
15 Respondent, Gary Development, numerous documents from  
16 the Government, many of which were set forth in these  
17 two volumes of material that I have here--

18 THE COURT: (interrupting) Three volumes.

19 MR. KREBS: Three volumes, I'm sorry, at  
20 counsel table.

21 Now those did include, which are marked in  
22 this volume as Respondent's Exhibit 20, a letter from  
23 LTV Steel Company, which is the successor, to my  
24 understanding, of Jones & Laughlin, and included

1 numerous documents entitled, "Jones & Laughlin Steel  
2 Corporation Hazardous Waste Manifests." And I think  
3 many of the documents were at least related to the  
4 document which is now being offered into evidence at  
5 this time on rebuttal, alright. And I believe those  
6 were entered, introduce and accepted into evidence as  
7 the Respondent's Exhibit 20. They all relate, it  
8 appears to me, on their face, a waste with an EPA waste  
9 type number K087, and several have the words on them,  
10 "tar decanter...", D-E-C-A-N-T-E-R, "...sludge." This  
11 was an allegation that was contained in the original  
12 complaint by U.S. EPA.

13 Now we have three and a half, almost four  
14 years after discovery, and documents were to have been  
15 produced, the Government coming into this case  
16 introducing documents related to the same allegation  
17 that was originally contained in their complaint and  
18 waited until their case on rebuttal to do it. In my  
19 opinion, that is highly improper. We were not provided  
20 until today with this certification by Mr. Broman.  
21 This was never sent to us, even though at the hearing  
22 on September 11th, counsel for EPA was instructed to  
23 send to us anything which they intended to introduce  
24 into evidence when this trial recommenced. I did not

1 receive this until about 5 minutes ago.

2 Mr. Broman was a witness in this case, Your  
3 Honor. He was called by the Respondent Gary  
4 Development because there were allegations raised in  
5 the complaint regarding the alleged waste of J&L going  
6 to the Respondent Gary Development. So we called  
7 Mr. Broman as a witness. He was in this courtroom, you  
8 heard evidence from him I believe the date was the 10th  
9 of September, perhaps the 9th, but I believe it was the  
10 10th. Your transcripts would show the correct date.

11 It is indicated in the transcript of  
12 September 11th by counsel for EPA that the documents  
13 which they are now attempting to introduce into  
14 evidence, were obtained by them on Tuesday of the week  
15 we had trial; that would have been Tuesday, September  
16 8, 1987, that they had possession of these exact  
17 documents which they're now attempting to put into  
18 evidence in rebuttal.

19 That was before they started their case in  
20 chief. Their case in chief was not started until  
21 September 9th. So based upon the transcripts and  
22 representations of counsel made in there, they had  
23 these documents the day before evidence was taken,  
24 because the first day as you recall, when we arrived

1 here, we did not have a court reporter, so we did not  
2 actually take evidence. And we started evidence on  
3 September 9th, if my dates are correct. They had these  
4 documents on that date. They did not offer them into  
5 evidence. They rested their case approximately a day  
6 later. These documents were never given to us during  
7 their case in chief, were never offered at all into  
8 evidence. They offered instead a document which is  
9 Respondent's Exhibit 20.

10 Mr. Broman, who allegedly signed this  
11 certification on this document 31, was present in  
12 court, testified regarding wastes sent by J&L, they had  
13 every opportunity to ask him questions regarding this  
14 waste, they failed to do so. The individual was here,  
15 had they have raised this, I would have had the time to  
16 cross-examine Mr. Broman regarding these documents.  
17 These documents were never revealed.

18 To me, this is totally improper rebuttal. If  
19 this is evidence, it should have been submitted with  
20 their documents when they sent them to us in February  
21 of '87. If they didn't have them at that time, they  
22 should have given us these documents when they obtained  
23 them, the day before we took evidence when I was  
24 sitting here in this courtroom at this same table.

1 They chose not to do so. They chose to give us a bunch  
2 of these documents in a different form than these are,  
3 during the end of the day on Friday, September the  
4 11th, and subsequently never sent us, to my knowledge,  
5 and counsel can correct me if I'm wrong, there has been  
6 some time lapse here, any other documents related to  
7 this.

8 Counsel indicated that when we debated this  
9 issue last time in this courtroom that these were  
10 being, documents were being presented during rebuttal,  
11 as opposed to their case in chief because Gary  
12 Development had raised issues in their testimony  
13 regarding this waste. Last night I took the time to  
14 read through the entire transcript of evidence given by  
15 Gary Development witnesses prior to yesterday, okay.  
16 And that included the testimony of Mr. Hagen right here  
17 sitting at counsel table. The only reference I found  
18 in our case in chief was, regarding decanter sludge,  
19 was in the testimony of Larry Hagen. And it is  
20 contained at the bottom of page 688 of the transcript.  
21 This is Volume III dated September 11, 1987, which  
22 would be the last day of the hearing before we recessed  
23 previously.

24 And specifically I would like to read you

1     what was being discussed at that time regarding this  
2     waste, and I was asking questions. This is Gary's case  
3     in chief.

4             "Question: Okay, as pointed out by counsel,  
5     there's a number on that list also for the decanter  
6     material from J&L. Answer: We asked J&L when we filed  
7     the Part A, or I should say Joe Tate did, what might  
8     you possibly, if you're going to file this Part A, the  
9     Government requires we list what we're going to  
10    produce. No one knew at that time who had what to  
11    dispose of. We asked J&L what the things were they  
12    were going to use us for, that they might possibly  
13    might want to use us as a disposal sight under, you  
14    know, filling this Part A. And they gave us the list  
15    that appears on the Part A. Question: And has that  
16    been where you got the different numbers from,  
17    including the decanter material? Answer: Yes.  
18    Question--" top of page 689 of the transcript, the  
19    question is, "At that time, were you taking decanter  
20    material, or did it exist to your knowledge? Answer:  
21    I really don't know. In the days before RCRA it all  
22    went somewhere. I mean things just came in as 20 yards  
23    of waste and nobody was obligated by law to tell you  
24    what it was, other than 20 yards of waste."

1           The next question on line 10 on page 289  
2 shifts to the waste of a different company, American  
3 Chemical. What I've just quoted is the only thing I  
4 could find last night, and maybe counsel has something  
5 else, but the only thing I could find in the testimony  
6 of our case in chief where this waste was discussed at  
7 all, tar decanter-wise, specifically discussed, and  
8 that was the discussion.

9           Based upon that, we have not opened the door  
10 to have them come in and bring in all these documents,  
11 which they could have put in during their case in  
12 chief, which they had the day before evidence was  
13 taken, and which they decided not to put into evidence.  
14 And now here we are in their rebuttal, and they say  
15 this is proper rebuttal. It is not. If it is  
16 anything, it's omitted direct testimony from the  
17 Government.

18           THE COURT: Mr. Radell.

19           MR. RADELL: Your Honor.

20           THE COURT: I would like to know three  
21 things: Why was it not offered sooner, why was it not  
22 sent to counsel before now, and why is it proper  
23 rebuttal?

24           MR. RADELL: I'm sorry, I did not hear the

1 first question.

2 THE COURT: The first question was why was  
3 this series of documents not offered sooner with your  
4 case in chief?

5 MR. RADELL: Originally they, the copies of  
6 these documents as explained earlier and just now by  
7 Mr. Krebs, were not available to U.S. EPA until two  
8 days before the original trial. Since we had not  
9 included them in the pre-hearing exchange, we did not  
10 think it was appropriate to use them as our primary  
11 evidence.

12 And it was not--and we did not have  
13 Mr. Broman testify about them either because he  
14 testified before Mr. Hagen, upon whose testimony we  
15 decided that it was necessary to use these, because  
16 Mr. Hagen later, not at that point when we originally  
17 asked him about the Jones & Laughlin Steel, but later  
18 in his testimony he testified that he had never signed  
19 any hazardous waste manifests and that Gary Development  
20 Company had never accepted any hazardous waste. So it  
21 was not specifically to rebut the fact that this was  
22 K087 waste, which was what Mr. Krebs was just  
23 discussing, but to rebut the fact that Gary Development  
24 Company had taken any hazardous waste at all.

1           Now we determine it was necessary. And we  
2 did attempt to introduce these at this point with  
3 Mr. Hagen as the signatory for one of the documents, to  
4 provide the basis for introduction into evidence. So  
5 we did try to admit these into evidence after last  
6 trial, but they were not admitted because the copies  
7 were not certified and they were--some of them were  
8 rather illegible. So not only are these copies  
9 certified, but they've also been--each copy has, each  
10 manifest has been copied on an individual sheet,  
11 instead of having two manifests on each side, as had  
12 been. So that's why we didn't do this previously.

13           And then we did sent it to opposing counsel  
14 by--in case it was--and your being dismissed while we  
15 were waiting for--to find out whether or not we were  
16 going to be coming back to a hearing. Then I guess it  
17 was an oversight on my part then. And you did give a  
18 ruling that I had time--and it's been a couple of  
19 years, but they've got the same meanings for evidence.

20           THE COURT: Well I remember that they were  
21 illegible before and that we had a problem with it,  
22 however I'm astonished that this wasn't sent at the  
23 time when this current series of hearings was  
24 scheduled, at least at that point Mr. Radell. Your

1 recollection ought to have been refreshed.

2           Nevertheless, they are highly relevant, and  
3 although I don't care for everything I see here, I will  
4 admit them, and I will admit them on rebuttal with some  
5 reluctance, but not enough to prevent me from taking  
6 them in as to their appropriateness on rebuttal.  
7 Number 31 is received.

8                               (Whereupon, Complainant's  
9                               Exhibit 31 was received into  
10                              the record as evidence.)

11               THE COURT: Now, continue.

12 BY MR. RADELL:

13           Q     Okay, Mr. Cooper, you said also that EPA had  
14 received additional manifests from U.S.S. Lead?

15           A     Yes we did.

16           Q     Could you please explain how EPA came into  
17 possession of the copies of those manifests?

18           A     EPA Office of the Regional Counsel requested  
19 that a woman, I believe it was a law clerk, Sue Weimer,  
20 go down and actually copy the documents directly at  
21 U.S.S. Lead. And so she went down there previous to  
22 the September, 1987 start of this hearing and actually  
23 copied those.

24           Q     Why did an EPA representative go copy these

1       instead of having someone from U.S.S lead send us  
2       copies?

3           A       U.S.S. Lead was in bankruptcy. Apparently  
4       Mr. Liscum, Richard Liscum, who is in charge of the  
5       copies would not go to the office everyday; it was  
6       closed, basically. A phone answers in his own house  
7       and so on, and it's possible that they didn't even have  
8       a copy machine. It's my recollection that the copies  
9       were made from the manifests as they were picked up and  
10      taken somewhere else, copied, and then brought back to  
11      U.S.S. Lead. So arrangements had to be made ahead of  
12      time for Mr. Liscum to actually be there, open the  
13      office, give the documents to Sue, and then be there  
14      when she came back to return them.

15           Q       Okay. Are you familiar with the copies  
16      obtained by Ms. Weimer?

17           A       Yes.

18           Q       Have you compared them to the manifests  
19      previously introduced as evidence into these  
20      proceedings?

21           A       Yes. Just as the ones for J&L Steel, I took  
22      each manifest copy that we originally got with the name  
23      of the generator and the name of the transporter sign  
24      on there, but lacking the signatures of Gary

1 Development, I took each of the ones that Sue Weimer  
2 brought back and stapled them one for one, you know,  
3 looking at the hazardous waste manifest number, the  
4 date, and the signatures that were on there and  
5 comparing them, and then found that in almost every  
6 case, there was a one for one correspondence with the  
7 one she copied and the ones we had gotten from 3,007  
8 information request.

9 Q Were there any discrepancies?

10 A My recollection, there were two  
11 discrepancies. One in which we didn't have the  
12 generator and signature--the generator and transporter  
13 copy of the original 3,008H--or 3,007 information  
14 request. We didn't have that from 1987, but we did,  
15 and Sue Weimer's copy actually had one with three  
16 signatures, Gary Development's signature--in other  
17 words, the one with the three signatures on them we did  
18 have we were lacking one with the two signatures.

19 Q Okay. So that was one discrepancy.

20 A Yeah. There was one other discrepancy. I  
21 think that we actually had the matching copies, but in  
22 fact, there was no Gary Development signature on the  
23 second copy either. There was an oversight or I don't  
24 know, Gary Development's signature was on neither of

1 the copies that I stapled together.

2 Q Do you remember the numbers of those  
3 manifests by any chance?

4 A I don't.

5 Q Did you, at the time that you were reviewing  
6 these manifests, did you take any notes that would  
7 document those numbers?

8 A Yes. I wrote them down and kept records so I  
9 wouldn't have to go back through again to check it.

10 Q Is this the copy of--is that the notes that  
11 you wrote down at the time?

12 A Yes. This is the notes regarding U.S.S. Lead  
13 ones. And two discrepancies I noted were hazardous  
14 waste manifest number 275, in which the Gary  
15 Development signature of receipt of the waste is not on  
16 that document, and number 2402, 2-4-0-2, we have in  
17 that one just the one with the three signatures,  
18 however, the Gary Development signature is there, but  
19 it's practically, possibly it's illegible actually.  
20 But there is a signature.

21 Q Did you at any time attempt to obtain  
22 certified copies of manifests from U.S.S. Lead?

23 A Yes I did.

24 Q And whom did you contact?

1           A     Mr. Richard Liscum.

2           Q     And did he provide such copies?

3           A     He was unable to do so when we contacted him  
4 when we noticed that the hearing was going to be  
5 resumed. Sometime in the summer we contacted him and  
6 he told us he was not able to any longer give us  
7 certified copies. And he told us that in fact there  
8 had been a fire at the office, I believe it was in May  
9 of this year, and he was no longer able to provide us  
10 copies of those documents.

11          Q     Did he confirm that in writing at all?

12          A     Yes he did. He sent a letter to us stating  
13 that.

14               MR. RADELL: Could you please mark this as  
15 Complainant's Exhibit number 32?

16                               (Whereupon, Complainant's  
17                               Exhibit 32 was marked for  
18                               identification.)

19 BY MR. RADELL:

20          Q     Is this the letter you received from  
21 Mr. Liscum?

22          A     Yes it is.

23               MR. RADELL: Then I'd like to move to  
24 introduce that into evidence.

1 (Pause.)

2 THE COURT: Mr. Krebs?

3 MR. KREBS: Yes. I--I'm not sure I have an  
4 objection, but I'm not sure what the purpose--this  
5 letter, Your Honor, is dated December 7, 1990, which is  
6 a matter of about 10 or 11 days ago. I'm not sure how  
7 this is evidence regarding the complaint that was filed  
8 in 1985. If counsel maybe could explain that, I may  
9 have no objection, but I'm not sure what the  
10 relationship is at this time.

11 MR. RADELL: It merely indicate that the  
12 original of the documents we attempted to introduce in  
13 1987 have been destroyed by a fire, and we're therefore  
14 unable to obtain certified copies of them.

15 MR. KREBS: No objection.

16 THE COURT: Number 32 is received.

17 (Whereupon, Complainant's  
18 Exhibit 32 was received into  
19 the record as evidence.)

20 BY MR. RADELL:

21 Q Mr. Cooper, are these copies of the documents  
22 obtained by Susan Weimer?

23 A Yes, these are the documents.

24 THE COURT: Now when were these copies made,

1 Mr. Cooper?

2 MR. RADELL: Early September of '87.

3 THE WITNESS: Early September '87, that's  
4 right.

5 MR. RADELL: Would you please mark those as  
6 Complainant's Exhibit number 33?

7 (Whereupon, Complainant's  
8 Exhibit 33 was marked for  
9 identification.)

10 MR. RADELL: I'd like to move to introduce  
11 these documents into evidence.

12 MR. KREBS: Could I ask a question on the  
13 purpose of objecting please? I think the witness may  
14 have answered.

15 Mr. Cooper, when did you say that EPA  
16 received these documents, which are now marked as  
17 Complainant's Exhibit number 30?

18 THE WITNESS: They were just prior to the  
19 September, 1987 start of this hearing.

20 MR. KREBS: So early September, '87--

21 THE WITNESS: (interrupting) Yes.

22 MR. KREBS: --or late August?

23 THE WITNESS: Early September.

24 MR. KREBS: Okay, but before the hearing

1       started?

2               THE WITNESS:   Yes.

3               MR. KREBS:   Okay.   Was there any reason why  
4       these documents were not provided to Gary Development  
5       or to me as their counsel prior to today?

6               MR. RADELL:   If I could explain--

7               THE COURT:   Well alright, just a moment.   In  
8       the first place, Mr. Krebs, a moment ago you said  
9       Exhibit 30, number 30, and it's been marked 33, so in  
10      order to avoid confusion, the material we're discussing  
11      here that's just been offered is Complainant's, for  
12      identification, 33.

13              Now then, that's a question that I certainly  
14      would like to have addressed, but I'm not sure that I  
15      want you, as the witness.   This is in the form of an  
16      objection, it seems to me.   What's the explanation?

17              MR. RADELL:   These were provided to Gary  
18      Development Company at the last trial.   That's why they  
19      originally had Complainant's Exhibit number 30 on them,  
20      and these were the copies that were not introduced into  
21      evidence before because we did not have a certified  
22      copy.   But Gary Development should have had these since  
23      September of '87 when we originally gave them to them.

24              THE COURT:   Alright.   Mr. Krebs?

1           MR. KREBS: Your Honor, I don't believe we  
2       received these. I just talked to Mr. Hagen here, and  
3       he said he's never seen them in this form. I'd like to  
4       point out, and if I'm mistaken, I'll be happy to be  
5       corrected, but I don't remember ever receiving these  
6       documents. And page 787 of the transcript in this  
7       hearing on September 11th, when counsel evidently  
8       attempted to enter these documents or some similar to  
9       them, and I believe that that time we were discussing  
10      number 31 on page 787, I discussed the fact that I did  
11      not have them and The Court said, "You will copy it and  
12      get it and get it to you forthwith, like early next  
13      week. And I suggest that you also make another copy of  
14      number 30 in its present form with the material taken  
15      out of it that should be taken out and send him a copy  
16      of that too, and anything else you may intend to use on  
17      rebuttal, together with Mr. Radell, the names of any  
18      additional witnesses you will call for your case on  
19      rebuttal."

20           So in that paragraph, to me it appears that  
21      we were discussing these documents at that time as 30  
22      being the exhibit--or the documents that have now been  
23      admitted as Complainant's 31, the Jones and Laughlin  
24      manifest documents, and we also discussed at that time

1 a proposed Exhibit 31, which apparently now is  
2 Complainant's Exhibit 33, which is forms from  
3 Industrial Disposal Corporation regarding the U.S. Lead  
4 refinery, Inc. I really don't believe I received  
5 these.

6 I mean I've got a lot of paper in this case;  
7 I received a lot of things. There are documents very  
8 similar to these in this blue compilation of documents,  
9 and I believe that the documents similar to these, or  
10 at least that incorporate portions of these documents  
11 have previously been introduced in this cause, and I  
12 believe they are Complainant's Exhibit 23 on  
13 U.S.S. Lead, and I have received those documents. But  
14 they're not the same as the documents here that are now  
15 marked Complainant's Exhibit 33.

16 The second objection, other than not having  
17 these, in my opinion, before today, is that again there  
18 is no certification as to the authenticity of these  
19 documents. There has been no individual who has been  
20 brought to testify from U.S. Lead refinery, as to the  
21 authenticity of these documents, as to them being  
22 correct, we have a witness from EPA who's testifying  
23 that he believes another person from EPA was involved  
24 in the reproduction of these documents.

1           I mean, if--it seems to me that in a case of  
2       this nature where the United States of America is  
3       trying to condemn a sanitary landfill as being a  
4       hazardous waste site, and now we've gone through about  
5       six different waste streams. We started off with waste  
6       streams from J&L that had been delisted, that the EPA  
7       had delisted; published in the Federal Register, and  
8       yet EPA files a complaint in this case saying that my  
9       client took a particular type of waste from Jones &  
10      Laughlin that was hazardous, when the same agency had  
11      delisted the waste as being non-hazardous. We continue  
12      to come up with new waste streams, we knock down one of  
13      the straw dogs, they bring up another. We knock it  
14      down, they bring up another. We call real people in  
15      this case, all they do is bring in a bunch of forms.  
16      Now we have forms where a company is allegedly not in  
17      existence, they somehow are able to get a letter from  
18      an individual that says he knows that the original  
19      documents were destroyed, but they haven't brought in a  
20      person into this courtroom that can identify these  
21      documents as being the complete records of this company  
22      regarding this waste. They haven't even brought in the  
23      EPA person who allegedly was involved in photocopying  
24      these documents. We have an environmental scientist

1 here sponsoring exhibits that are not EPA's exhibits.  
2 And I just think this is highly objectionable.

3 We have subpoenaed people in this case, and I  
4 don't see why the Government can't send out subpoenas  
5 if they want to tie somebody to a waste stream, why  
6 they cannot send out a subpoena--certainly there must  
7 be some people at this company that are still in  
8 existence on this Earth and they're not deceased, even  
9 if the company isn't around. There are signatures on  
10 these forms. They could have subpoenaed the people  
11 whose names appear on these forms and bring in real  
12 evidence in this case and give me the opportunity to  
13 cross-examine people; I cannot cross-examine these  
14 documents.

15 THE COURT: I'm having some problem with it  
16 too, Mr. Radell. I think at the very least we could  
17 find the person who actually made the copies who--

18 MR. RADELL: (interrupting) She's no longer  
19 employed at the agency.

20 THE COURT: Well she presumably is still  
21 alive, and this--I have the same problems. There just  
22 is really no--nothing to tie anybody to this. All we  
23 have is documents and testimony that somebody went  
24 somewhere and copied them. Now it really isn't fair.

1     There are people who could have been called, and even  
2     if this lady is not still an employee of the EPA, you  
3     could bring her.

4             Now if you want to try and bring her for  
5     sometime today or possibly tomorrow, I will entertain  
6     an effort in that direction. But I don't think I will  
7     admit them based on what we've heard so far. It just  
8     really is not fair to the defense and I presume that  
9     agency too does not wish any action it takes to be  
10    founded upon evidence which really is not perfectly  
11    fairly based.

12            MR. RADELL: Well it is the best available  
13    evidence since the originals have been destroyed, so we  
14    will never get copies better than this. And it--

15            THE COURT: (interrupting) Well--

16            MR. RADELL: --certainly is relevant to the  
17    proceedings and I think that--

18            THE COURT: (interrupting) It may very well  
19    be relevant, but there has to be some connection with  
20    somebody who actually had some hands-on here. Now  
21    perhaps you can find the lady who made the copies, who  
22    could at least testify where she went and what she did  
23    and that these are the ones she made, but this is going  
24    a little bit too far away in my view.

1           MR. RADELL: I would also point out that  
2 these, when compared with the copies that had been  
3 admitted into evidence already, which have been  
4 certified as authentic pursuant to the information  
5 requests sent to U.S.S. Lead, that it's very evident  
6 when comparing these copies to the copies previously  
7 admitted, by comparing the manifests and the  
8 information currently filled in on those forms, and  
9 their unique manifest numbers, that these are copies of  
10 documents that have already been admitted, it's just  
11 that these have an additional signature.

12           THE COURT: Well I haven't had an opportunity  
13 to compare what's in evidence with what you have just  
14 handed me.

15           MR. RADELL: Yes, and Mr. Cooper testified  
16 that he went through--

17           THE COURT: (interrupting) Yes.

18           MR. RADELL: --and compared each one.

19           THE COURT: I heard it. I heard the  
20 testimony. If you will, during the next break, provide  
21 me with copies of what is already in evidence, I will  
22 take another look at it. I will withhold ruling for  
23 the moment.

24           MR. RADELL: Okay.

1 THE COURT: Now continue.

2 MR. RADELL: This basically concludes  
3 Mr. Cooper's testimony for rebuttal, however, the Court  
4 had asked Mr. Cooper to also explain how, if at all,  
5 these EPA stipulation regarding the withdrawal of F006  
6 wastes from the complaint would affect the penalty  
7 calculation. Would the Court like to have me proceed  
8 to have Mr. Cooper testify in that matter?

9 THE COURT: Yes please.

10 MR. RADELL: Okay.

11 BY MR. RADELL:

12 Q Mr. Cooper, are you the one who originally  
13 calculated the penalty for the complaint for this  
14 matter?

15 A Yes.

16 Q Have you had an opportunity to review that  
17 penalty calculation in light of the fact that  
18 allegations concerning hazardous waste number F006 have  
19 been dropped from the complaint?

20 A Yes I have.

21 Q The penalty policy that was in effect at the  
22 time of this complaint being filed, is that the policy  
23 that you use as basis for calculating the complaint--  
24 the penalty?

1           A     Yes.

2           Q     Does that policy refer to, or give any  
3           indications how volumes of wastes or quantities or  
4           different types of waste are to be weighed in  
5           determining the penalty amount?

6           A     It says that under the potential for harm to  
7           the environment, that can be a factor which can be  
8           considered.

9           Q     Uh-huh.

10          A     It doesn't get more specific than that.

11          Q     Okay. So was that factor that may be  
12          considered or must be considered, is it just that  
13          policy state either way?

14          A     It says "may be considered."

15          Q     Okay. Did you consider the volume for the  
16          variety of wastes accepted at the facility, and your  
17          calculation of the penalty amount?

18          A     At my discretion, what I did was to not  
19          consider specifically the numbers of wastes or the  
20          quantities of wastes. The important thing to me was  
21          the potential for harm can be broken into two  
22          categories, and this is potential for harm to the  
23          environment by the wastes that have been buried at the  
24          facility or, and the word or is used, or the potential

1     for harm to the implementation of the program under the  
2     Resource Conservation Recovery Act or the statute. And  
3     when this facility was referred to us by the State of  
4     Indiana for enforcement, it was very clear that  
5     facility had received hazardous wastes, number one, and  
6     also very clear that the facility was not complying  
7     with the majority of the regulations for hazardous  
8     waste management under the Resource Conservation  
9     Recovery Act. And my feeling was that in calculating  
10    this penalty, and you will look on every sheet that I  
11    submitted that has been entered into evidence in the  
12    penalty calculation, I refer to the potential harm to  
13    the program and the statutory regulations by a facility  
14    completely, blatantly ignoring implementing those  
15    regulations. There's no reference to waste finds or  
16    types of wastes, but it's certainly decided in my mind  
17    that the evidence was there that hazardous wastes had  
18    been accepted. The harm to the program was the major  
19    thrust of the penalty.

20           Q     And it is your belief that this was  
21    consistent with the requests of all the county policy?

22           A     Yes.

23           Q     Does the penalty policy give any sort of  
24    examples, or what is the basis for your belief that

1       that is consistent with the penalty policy?

2           A       Well I believe there are some examples that  
3       are given and that we use when we review it. There is  
4       one example that even though the potential for harm to  
5       the environment can't be calculated, in this case  
6       specifically because they had no wells that actually  
7       monitored for RCRA parameters, we didn't know if they  
8       were actually being released. It was difficult to  
9       quantify harm to the environment, although the  
10      potential was there, the Civil Penalty Policy of 1984  
11      allows you to, in spite of not knowing specifically  
12      quantities or actual harm to the environment, it allows  
13      you to assess a major part of the penalty on just harm  
14      to the program.

15          Q       Based upon your review of the penalty  
16      calculations subsequent to EPA's withdrawal of  
17      allegations concerning hazardous waste F006, do you  
18      believe that the penalty assessed should be reduced, or  
19      should it be the same or--?

20          A       It should be the same, at least; it should  
21      not be reduced.

22          Q       And why was that?

23          A       Because I still think, as I said, blatantly  
24      ignoring the regulations after having taken hazardous

1 waste from 1980 and into 1983, not even counting the  
2 F006 waste which were, as opposing counsel has pointed  
3 out, temporarily delisted, but that delisting was  
4 denied in the final allegation, final analysis. Waste  
5 was taken for, over a period of three years, '80, '81,  
6 '82, '83, and the facility has stated in this hearing  
7 even that they have not accepted hazardous waste, we  
8 believe the evidence was there, the penalty could have  
9 been much higher in fact, and I don't think it should  
10 be reduced based on harm to the program, specifically.

11 MR. RADELL: Okay. Thank you. I have no  
12 further questions.

13 THE COURT: Mr. Krebs?

14 CROSS-EXAMINATION

15 BY MR. KREBS:

16 Q Mr. Cooper, I guess I'm somewhat confused  
17 about these forms we have in Exhibit 31, and there is  
18 an affidavit or a certification I guess, by  
19 Mr. Carl Broman, which you've discussed. And I guess  
20 it seems to me it's pretty complex, but maybe I'm just  
21 a little--lack of knowledge of forms of this nature.  
22 Is this a standard form that you use in the industry  
23 today for an EPA manifest of RCRA waste?

24 A Forms would vary. In this case, I mean it

1       says J&L Steel at the top; it's not a generic form.  
2       It's a form, in this case, where they had a part A and  
3       a part B to it, original 3,007 information request.  
4       The company only submitted a part A, which does not  
5       have Gary Development's signature on it.

6           Q       Okay.

7           A       And part B has the signature from the  
8       company, and that is returned upon receipt at the  
9       facility.

10          Q       Now I think you've testified to this, but is  
11       it correct your testifying that every signature at the  
12       bottom of each one of these pages is from, to your  
13       knowledge, an employee, at least at some time, an  
14       employee of Gary Development? Is it correct your  
15       testifying to that under oath here today?

16          A       I believe that in the previous testimony when  
17       Mr. Hagen was on the stand, we went through the  
18       different names that you have, Brian Boyd and Pat Craig  
19       or Pete Craig, and we went through and established,  
20       through his testimony, that these people were former  
21       employees of Gary Development.

22          Q       Okay. So your testimony is your recollection  
23       of Mr. Hagen's testimony on September 11, 1987 as far  
24       as signatures, alleged signatures, by employees of Gary

1 Development?

2 A Yes, I think that my attorney asked  
3 specifically every name that we--that was legible on  
4 those. We asked if they in fact had been employees at  
5 one time of Gary Development.

6 Q Okay. I'm going to hand you manifest number  
7 0207 for the fact--at least on the top of mine, it  
8 appears that it is 0207 and maybe a 4, correct? Does  
9 that look like a 4 to you?

10 A It looks like a 4, yes.

11 Q At the bottom it's just 0207, is that  
12 correct, there is no four?

13 A That's correct. That's the way we have  
14 received these copies on the certified copies, as the  
15 cover document to this exhibit shows, these are  
16 certified copies from Carl Broman, who matched up part  
17 A and part B of this specific manifest.

18 Q Okay. What's the signature, or what's the  
19 individual's name there at the bottom?

20 A That is Brian Boyd. I've looked at many,  
21 many, many of these documents, and I would recognize  
22 his signature anywhere.

23 Q Is that his signature, or is that printed?

24 A It's actually printing. He has printed--

1 Q Where do you see "Boyd"?

2 A Well I know that's the name. I mean, it's  
3 hard to read, but I know it's the name because I've  
4 looked at so many of these documents with his signature  
5 on it.

6 Q But actually you can't read the word "Boyd"  
7 there can you? You can read the word "Brian", correct?

8 A That's right.

9 Q So you're presuming that's Mr. Boyd because  
10 you can read his first name?

11 A Based on experience of looking at hundreds of  
12 these manifests, I know what the name is enough to read  
13 it, and enough to recognize it.

14 THE COURT: Mr. Krebs, I wonder if the copy I  
15 have here would be more useful when you're examining  
16 him, both as to the numbers and--

17 MR. KREBS: That one is better. Yes. I  
18 apparently always inherit the fifth generation copies.

19 THE COURT: No, last time I was the one.

20 BY MR. KREBS:

21 Q Now I'm still a little confused about how  
22 this operates or how J&L--you believe they operated  
23 under this form. Would they take this whole form to  
24 the disposal facility? Would they take this A and B

1 and say, here's this waste, here's tar decanter sludge,  
2 K087, please sign that you're going to receive it, is  
3 that what happened?

4 A I would imagine that when it is taken by the  
5 transporter, he signs off, he takes a copy he's given  
6 and left with the generator, and it's probably, like in  
7 a lot of these cases where they have--carbon copies are  
8 made and the top one can be ripped off and left with  
9 the generator after the transporter receives the waste,  
10 and then upon delivery of the waste and receipt by Gary  
11 Development, they or the transporter, would then send  
12 it back to J&L Steel in this case.

13 Q Well it is--if you read this, and Mr. Broman  
14 is not here obviously to testify, even though he's  
15 testified in this hearing before under my subpoena,  
16 that if you read his certification, is it correct that  
17 what he's saying is that what would have been sent to  
18 the disposal facility would simply have been the part  
19 B, a form which does not describe the waste at all, and  
20 that signatures are obtained and that that's why these  
21 things appear like they've been in the courts were  
22 previously monkeyed with because this bottom form comes  
23 back and it's been torn off the top form, and the  
24 bottom form comes back, and then someone has to match

1 up or attempt to match up the bottom half with the  
2 correct top half, isn't that basically what this  
3 process was?

4 A Yes, but I would anticipate that obviously  
5 the trans--

6 Q (interrupting) The answer is yes, right? So  
7 that would mean that a person signing this form would  
8 have no idea what the waste is?

9 A (Simultaneously) That's not true--

10 MR. RADELL: (Simultaneously) Objection.

11 THE WITNESS: That's not true.

12 MR. RADELL: You're asking him to conjecture  
13 about something that he'd have no knowledge of.

14 MR. KREBS: I would like to ask this question  
15 of Mr. Broman, but he's--

16 THE WITNESS: Well okay. Let me tell you  
17 what the hazardous waste management--hazardous manifest  
18 system is set up--

19 MR. KREBS: That's not my question. I don't  
20 care about the hazardous manifest system. Just please  
21 answer my question.

22 THE WITNESS: That's what we were discussing,  
23 sir. This is the hazardous manifest--

24 MR. KREBS: (interrupting) You said--

1 THE COURT: (interrupting) Just a moment.

2 BY MR. KREBS:

3 Q (interrupting) You said this is not a  
4 typical form used in the industry, correct? Today.  
5 This is not a generic type of RCRA form, right?

6 A If--

7 Q No, I'll give you the opportunity to answer.  
8 Just answer that question.

9 A But what I am saying is that there are  
10 different forms available state to state, company to  
11 company. But the forms have to meet certain  
12 specifications. They have to have on there the  
13 generator, the transporter, and the disposal or  
14 receiving company. And typically you have--the top  
15 form is kept by the generator when the transporter  
16 picks it up, the second form goes with the transporter  
17 to a disposal company, then the transportation company  
18 then gets their copy after they disposal company  
19 receives it, so that the transport company has a record  
20 of the generator, the transporter, and the disposal  
21 company as well. And then, in order to complete the  
22 cycle, part B in this case, must be sent back to the  
23 generator so that he knows. Everybody knows it's been  
24 delivered.

1           Q     Let me ask you this though: Is it standard  
2 to tear off a part of a form and take that part to the  
3 disposal facility? I mean to me, aren't you supposed  
4 to notify the disposal facility of what the waste is?  
5 How can you tell from part B what this is? How could  
6 you tell it's K0087 versus trash?

7           MR. RADELL: I'd object to that to the state  
8 of mind of the person receiving the waste. The  
9 knowledge of that person is relevant to this  
10 proceeding. This is not a criminal trial, so the frame  
11 of mind of the person receiving the waste is  
12 irrelevant.

13          THE COURT: Overruled. Let's hear the  
14 testimony.

15          THE WITNESS: I am sure that if you went to  
16 the transport company, if they were still in existence,  
17 and I'm sure they are, but that they would have a copy  
18 from which this part B was torn off and at the time, I  
19 would submit to you the time that this was delivered to  
20 Gary Development there would have been a document  
21 attached to this part B which would have said who the  
22 generator was, who the transporter was, who the  
23 disposing company would be that will receive it, and  
24 that information, in this case K087, would have been in

1 front of the person as he was signing the document.

2 BY MR. KREBS:

3 Q Yeah, but what you just told me is that it's  
4 very likely that the top portion of this form on the  
5 second part of this two page form, duplicate, that's  
6 sent to the transporter is probably in the files of the  
7 transporter, correct? That's where it stays? That's  
8 what you just said, right?

9 A There would be a copy with the transporter.  
10 There might be a copy--

11 Q (interrupting) which means this copy never  
12 was close to the facility. That what we have is J&L  
13 has a two page form. They keep one page of it which is  
14 a part A and a part B, is that correct?

15 A They give the other one to the transporter,  
16 the third part. And the transporter takes the other  
17 portion and he gets this signature on this part B and  
18 sends it back to J&L supposedly.

19 Q How does anybody know that the disposal  
20 facility was given a copy or was shown part A? How do  
21 we know that?

22 A This form may have had three parts, I mean  
23 three pages. It could be--

24 Q (interrupting) It doesn't say that in the

1 certification. You're speculating, Mr. Cooper. It  
2 says two parts right there in the certification--

3 A The two parts--

4 Q (interrupting) --that you won't call.

5 A Two parts, but we don't know how many  
6 original, the original of how many carbon copies there  
7 would have been to that. Gary Development--might have  
8 had a carbon copy.

9 Q Might. Do you know for a fact?

10 A I don't know that they do--

11 Q (interrupting) Have you ever asked?

12 A They've never produced--

13 Q (interrupting) Have you ever taken  
14 Mr. Hagen's deposition in the five years that this case  
15 has been pending, to your knowledge, asked him about  
16 these forms?

17 A He has stated he has never taken hazardous  
18 waste.

19 Q Have you ever taken his deposition, to your  
20 knowledge?

21 A No.

22 Q To your knowledge, have you ever taken  
23 Mr. Broman's deposition?

24 A We haven't taken his deposition.

1           Q     To your knowledge in this case, every one of  
2     these forms, is it not correct, has the transporter as  
3     being Industrial Disposal Corporation, East Chicago,  
4     Indiana, correct?

5           A     Yes.

6           Q     Have you discussed this matter with anybody  
7     from that company?

8           A     We have tried to contact that company to get  
9     copies from them. They are apparently--were out of  
10    business. There was no way to get in touch with them.  
11    In fact, Mr. Hagen himself told me they were out of  
12    business.

13          Q     Have you attempted to find the location, to  
14    your knowledge, of anybody that used to be with that  
15    company?

16          A     We did make some efforts to try to get copies  
17    of transcripts or copies of manifests from them. They  
18    were unsuccessful.

19          Q     Who did you talk to?

20          A     I think we called the numbers on those forms,  
21    that I believe there should be phone numbers on there.  
22    There was no way to reach anybody.

23          Q     So EPA really doesn't know at this time what  
24    the transporter showed to Gary Development? You don't

1 know what part of this form was shown to Gary  
2 Development on each one of these, isn't it correct?  
3 You have no information one way or the other on that?

4 A We only know what's required for hazardous  
5 waste manifests under the regulations--

6 Q (interrupting) --what's required, do you  
7 know what happened?

8 A We can only speculate on that.

9 Q Thank you. Included in these documents is a  
10 manifest 01821 and a manifest 02080. And these are  
11 copies that you provided to me. The Judge has the  
12 original. There's a person's name, it looks like an  
13 M. Lockes or Lopez.

14 A Lopez.

15 Q Lopez.

16 A Uh-huh.

17 Q Are you telling us that you believe that is  
18 an employee of Gary Development?

19 MR. RADELL: I don't believe he's expressed  
20 any opinion on that matter.

21 MR. KREBS: Well he can say now.

22 THE WITNESS: I don't recall the original  
23 testimony whether we actually asked that.

24

1 BY MR. KREBS:

2 Q Well that person has signed and it's marked  
3 as a clerk and it has a date of receipt May 15, '81 on  
4 one and May 26, '81 on the other, correct?

5 A Yes.

6 Q And they signed for the disposal facility,  
7 correct?

8 A Yes.

9 Q What would be your opinion of these documents  
10 if you found out that person worked for the transport,  
11 never worked for the disposal facility, and that  
12 individual was an employee of the person who allegedly  
13 took this waste from the generator to the facility for  
14 disposal?

15 A It certainly wouldn't be the standard  
16 procedure.

17 Q Regarding your fine calculation, you  
18 discussed that you're not going to change your opinion  
19 as to an amount of a possible fine in this case. And  
20 basically two things that caught my attention that you  
21 testified to. You said the one thing you are to look  
22 at is the potential harm to the environment, and if I  
23 could paraphrase your testimony, and correct me if it's  
24 not correct, is that basically the only analytical test

1 of groundwater have been by the landfill, and that  
2 those aren't sufficient for you to determine whether  
3 there is or is not a potential harm to the environment,  
4 is that basically a correct paraphrasing?

5 A It's very difficult to determine whether  
6 there's been any release to the environment based on  
7 the wells, the insulation of the wells, the existing  
8 wells, and the parameters that have been analyzed for  
9 they're not all RCRA parameters, okay.

10 Q In fact they're all most not RCRA parameters,  
11 correct, the ones that they test for?

12 A Right. Right.

13 Q Okay. This case was file what, back in 1985  
14 approximately?

15 A '86.

16 Q '86. And this facility filed a part A  
17 application back in the early '80s?

18 A Late '80, 1980. Part A 1980.

19 Q If EPA believes there might be, I'm saying  
20 might be, a potential harm to the environment at this  
21 site, why hasn't EPA done any monitoring itself during  
22 the last 10 years at this facility?

23 A It's the company's responsibility under  
24 Resource Conservation Recovery Act to install adequate

1 wells and to monitor them. In fact, as late as last  
2 year, the company was told by the State of Indiana,  
3 IDEM, that this site needed a minimum of nine wells  
4 with two at each location--

5 Q (interrupting) Who told you that?

6 A --which would be eighteen wells.

7 Q Who told Gary Development of that?

8 A Indiana Department of Environmental  
9 Management.

10 Q Who?

11 A Carol Schmidt's group in the geology section.

12 Q Who specifically had the conversation with  
13 Gary Development and who did they talk to? I want to  
14 know the person, I want to know the date, and I want to  
15 know who they talked to at Gary Development.

16 A I've got the documents in my--right on the  
17 desk if you'd like me to tell you the dates.

18 Q Okay.

19 THE COURT: Mr. Radell, will you further --  
20 the question.

21 MR. RADELL: I'm not sure to which document  
22 he is alluding, so perhaps I'll have to come eye it  
23 myself.

24 (Pause.)

1 BY MR. KREBS:

2 Q Now did you find a letter from the Indiana  
3 Department of Environmental Management to Gary  
4 Development?

5 A Yes I did.

6 Q Okay. And can you give us the date?

7 A The date of this letter is October 19, 1989.

8 Q And it's from whom to whom?

9 A This is from Carol Schmidt of the geology  
10 section to Mr. Larry Hagen.

11 Q Okay. And why don't you read us what it says  
12 regarding monitoring wells?

13 A "Please find enclosed construction details,  
14 insulation instructions, date of collection  
15 requirements, and sampling analysis procedures for  
16 groundwater monitoring wells as promised per your phone  
17 conversation of September 11, 1989 with Mr. Ed Gefell,  
18 a geologist on my staff. This information comes from  
19 the United States Environmental Protection Agency,  
20 Technical Enforcement Guidance Document, and is for  
21 your reference in planning and installing an adequate  
22 groundwater monitoring well system at Gary Development  
23 Corporation Landfill. IDEM and U.S. EPA require a  
24 minimum of one up gradient well..." and minimum is

1       underlined, "...and three down gradient wells for both  
2       RCRA hazardous wastes and solid waste facilities Ed  
3       explained over the phone."

4           Q       Just so, what we apparently have here is a  
5       response from the state to Mr. Hagen's request for  
6       information on monitoring well guidelines, correct?

7           A       Yes.

8           Q       It appears to you? So it appears that he's  
9       asking them for information. They're not ordering him  
10      to do anything, correct?

11          A       In my discussions with Ed Gefell prior to  
12      this--

13          Q       Who is the person you're going to tell me  
14      about? Ed who?

15          A       Ed Gefell is the person who is the geologist  
16      on the staff of Carol Schmidt. He's the one that would  
17      have been talking with Mr. Hagen directly. And he had  
18      had discussions with me about the monitoring well  
19      system still being inadequate for RCRA monitoring  
20      purposes.

21          Q       His opinion, in discussions with you, and  
22      this letter does not reference that at all, does it?  
23      Is there any reference--

24          A       (interrupting) No it doesn't.

1           Q     --in this letter dated this year that the  
2 monitoring well system at Gary Development isn't  
3 adequate?

4           A     It doesn't specifically state that.

5           Q     Do you think that if they thought it was,  
6 they might have said this in this letter they wrote to  
7 regulated facility?

8           A     It does state that, inadequate groundwater  
9 monitoring system and sampling analysis plan assures  
10 the owner/operator and the IDEM that sufficient  
11 groundwater monitoring data of adequate quality are  
12 obtained to characterize groundwater contamination  
13 patterns and flow directions at the facility." And it  
14 goes on to say, "An acceptable monitoring well system  
15 and sampling analysis plan, including RCRA monitoring  
16 of hazardous waste parameters would address a major and  
17 fundamental complaint of the state and U.S. EPA with  
18 Gary Development Corporation, and would assure  
19 accessibility of acceptable groundwater samples in the  
20 future. Ed will work with you and we look forward to  
21 an adequate groundwater monitoring well system at Gary  
22 Development Landfill."

23           Q     Okay. So that's what the letter says. It  
24 said that--does it mention nine wells or does it say

1 one up gradient and three down gradient as minimum.

2 A As minimum. In this case, it does not  
3 specifically mention that. That was in the previous--

4  
5 Q (interrupting) Back to my question. And I  
6 appreciate you sharing that information with us from  
7 the State of Indiana, but my question is--well let me  
8 ask you this question, does EPA have the legal  
9 authority to go out to this site and put in groundwater  
10 monitoring wells?

11 MR. RADELL: Excuse me, you're asking him to  
12 testify about legal matters when he's not competent.  
13 He's not an attorney and I believe that the legal--the  
14 EPA's legal authorities have been on the face on this  
15 statutes and regulations.

16 THE COURT: I will permit the testimony. If  
17 you know the answer, Mr. Cooper, you may answer.

18 THE WITNESS: I honestly don't know, except  
19 under CERCLA, you know what funds would be available  
20 for actually going out and actually put in wells and  
21 sampling.

22 BY MR. KREBS:

23 Q Okay. But to your knowledge, EPA has not  
24 constructed any monitoring wells at Gary Development's

1 facility or adjacent to it, to your knowledge?

2 A The have not.

3 Q Have EPA ever sampled the water or made any  
4 attempt during the last 10 years to sample any water  
5 that is generated in the existing four monitoring wells  
6 adjacent to Gary's facility?

7 A No.

8 Q You indicated that the second item that is  
9 looked at in determining potential fines is the affect  
10 upon the implementation of the Act by the facility's  
11 compliance or non-compliance. In connection with that,  
12 can you tell us the first time that EPA advised Gary  
13 Development in writing, officially, that they were a  
14 RCRA facility and were not in compliance with all the  
15 various provisions of the regulations which are cited  
16 in the complaint? Can you tell us when the first  
17 correspondence or notice went out that constitutes an  
18 official order or notification by the agency as to that  
19 determination?

20 A What specific determination?

21 Q Okay. The complaint.

22 A Yeah.

23 Q You calculated the fine--

24 A (interrupting) Right.

1           Q     --based upon the allegations in the  
2     complaint. The complaint alleges numerous  
3     non-compliance with federal regulations, monitoring,  
4     leachate collection system, you name it, it's in there,  
5     correct?

6           A     Uh-huh.

7           Q     Almost the entire Act is for all regulations,  
8     many of them are in there. When was the first time  
9     that EPA ever notified Gary Development that it was not  
10    in compliance with each and every one of those  
11    regulations, prior to the issuance of the complaint?

12          A     That was the only time, when all of those  
13    were referenced. Previous to that, the State of  
14    Indiana had performed the inspections at the facility  
15    and sent those in their referral to EPA for enforcement  
16    action. So the State--

17          Q     (interrupting) Okay. I think those  
18    documents have been put into evidence previously,  
19    right?

20          A     Yes.

21          Q     And I think there was an individual you  
22    called as a witness from the state, Mr. Warner?

23          A     Mr. Ted Warner is State Inspector.

24          Q     Okay. And so those we've already had. So

1 those type of documents would be in this case, correct?  
2 The state's documents?

3 A I'm not sure they've been entered. I expect  
4 they have been. They've certainly been referred to in  
5 the complaint.

6 MR. KREBS: Okay. That's all I have.

7 MR. RADELL: I have no further questions.

8 THE COURT: Mr. Cooper, with respect to  
9 Complainant's 31 which we've been discussing, you said  
10 you were very well familiar with the signature of  
11 Mr. Boyd. However, going through these documents,  
12 there look to me to be a couple of different signatures  
13 for Brian Boyd.

14 THE WITNESS: Yes.

15 THE COURT: And I'm wondering which of these  
16 is the one with which you are very familiar, if you  
17 know. You may not know what accounts for these two  
18 differences, but if you do, I could use some  
19 information on it.

20 THE WITNESS: Yes, I have noted in going  
21 through and looking carefully and matching the  
22 hazardous waste manifest numbers and so on that  
23 Mr. Boyd, Brian Boyd, is usually in capital letters,  
24 Brian Boyd. On perhaps at least two occasions I see it

1 is written out.

2 THE COURT: I am showing you manifest number  
3 11126, March 18, 1982, where it really is written out.  
4 That appears to be a signature.

5 THE WITNESS: Yes.

6 THE COURT: But you don't know anything about  
7 this?

8 THE WITNESS: No, I don't really know the  
9 procedure at Gary Development and how this was handled,  
10 but I did note that there was a difference, Your Honor.

11 THE COURT: Thank you. If there is nothing  
12 further of this witness--

13 MR. RADELL: No.

14 THE COURT: Then you're excused Mr. Cooper.  
15 Thank you.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness was  
18 excused.)

19 THE COURT: Mr. Krebs, has your witness  
20 arrived?

21 MR. KREBS: Yes, I believe he has. We would  
22 call Mr. Dan McArtle to the stand. He's here.

23

24

1 Whereupon,

2 DAN MC ARTLE

3 called as a witness herein, having been duly sworn and  
4 having testified, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. KREBS:

8 Q Would you please state your name for the  
9 record?

10 A Danny R. McArtle, R for Richard.

11 Q Okay. Mr. McArtle, can you tell us where  
12 you're employed?

13 A I'm a self-employed carpenter or handling.

14 Q And what is the address of your business?

15 A 524 West Chicago Avenue, East Chicago,  
16 Indiana.

17 Q Okay. And Mr. McArtle, have you previously  
18 been involved with the company that was known as  
19 Industrial Disposal Corporation?

20 A Yes sir.

21 Q Okay. And can you tell us just briefly what  
22 your relationship with that corporation was?

23 A I started out as a truck driver and then a  
24 foreman before the company was sold.

1 Q Okay. And when was the company sold  
2 approximately?

3 A It was sold a couple times. First time I  
4 think it was '78, the second time was '82.

5 Q Okay. During the time that you were with  
6 that company, was there ever an employee of Marty  
7 Lopez?

8 VOICE: Mickey Lopez.

9 MR. KREBS: Mickey Lopez, I'm sorry.

10 THE WITNESS: Yes sir.

11 BY MR. KREBS:

12 Q Okay. And what was that person's job?

13 A Truck driver.

14 Q Truck driver?

15 A Uh-huh.

16 MR. KREBS: Okay. I'm going to hand you, and  
17 there's many documents here, and I know you've not been  
18 in this case, I'm going to hand you some documents.  
19 These are copies that were provided to me from U.S.  
20 EPA. And specifically these I believe for the record  
21 had been introduced previously back in 1987 as  
22 Complainant's Exhibit 23.

23 Now I would like to point out in case there's  
24 some total mock line up here that the 23 I have, Your

1 Honor, is the one that was provided to me in the  
2 discovery process with the change of exhibits. And as  
3 I recall, when 23 was admitted, there may have been a  
4 few pages taken out because of being illegible that may  
5 be in my copy, and I don't think we have the one here  
6 in the courtroom which was actually admitted, so I'm  
7 going to have to use this one to discuss this with the  
8 witness. So there may be a little mis-match, but it's  
9 not intentional if it happened.

10 23 that the Government had admitted in this  
11 case, and there were many--they were forms, they're all  
12 forms, they all appear to be them same form. I haven't  
13 counted them all. But at the top they say, "Industrial  
14 Disposal Corporation, 2000 Gary Avenue, East Chicago,  
15 Indiana, 46312," and they're entitled, "Hazardous Waste  
16 Tracking Form" and they have like four different  
17 blocks.

18 BY MR. KREBS:

19 Q Are you familiar with this form?

20 A Yes.

21 Q Regardless of the information on it, this  
22 form itself?

23 A Yes sir.

24 Q Okay. And who developed this form?

1           A     I did.

2           Q     Okay. You did this yourself?

3           A     Uh-huh.

4           Q     Can you tell us approximately when this form  
5 was developed? What year?

6           A     Around 1980, '78, '80, something like that.

7           Q     '78 to '80, somewhere in that vicinity?

8           Okay. Specifically was this form developed by you on  
9 behalf of Industrial Disposal to track, it says it's a  
10 waste tracking form, to track what is now known as  
11 Resource Conservation Recovery Act, RCRA waste, or was  
12 it meant to track some other kind of waste?

13          A     It was actually just meant to track the waste  
14 of our customers for like further down the road if  
15 something happened you know--

16          Q     (interrupting) Okay.

17          A     --so we're sure where it went, you know.

18          Q     Okay.

19          A     Basically just about everything we haul had  
20 that little piece of paper on it.

21          Q     Okay. So you used this almost for everything  
22 you hauled?

23          A     Uh-huh.

24          Q     For RCRA hazardous and other waste?

1           A     Right.

2           Q     Okay. During that time did any waste hauled  
3 by Industrial, was it classified as hazardous by the  
4 State of Indiana now known as special, even though it  
5 may not have been RCRA waste?

6           A     That's hard to say 'cause all we would ask to  
7 state where they're going, they'd give us a letter, you  
8 know, so I couldn't say whether they'd classified it as  
9 a--

10          Q     Okay. I want to ask you a few questions  
11 about these documents, Dan, that are in the part of  
12 Exhibit 23. And there's a group that I have put  
13 together because they all appeared to be fairly  
14 similar, and these have at the top, "U.S.S. Lead  
15 Refinery, Inc.". And for counsel, I guess these don't  
16 have it, this one is numbered, it starts 277, the  
17 number in the middle of the page on the left hand side.  
18 And this one discusses gel calcium sulphate and then  
19 has Industrial Disposal Corporation and it also has at  
20 the bottom, "disposal site identification: Gary  
21 Development Landfill."

22                     In the top, under special handling  
23 instructions it says "none". What does that mean to  
24 you when it says none?



1 correct?

2 A Yes sir. .

3 Q You looked through? Now you mentioned  
4 previously that the state would look at certain wastes  
5 and one of the wastes that's discussed in here, and  
6 I'll point it out to you sir, is calcium sulphate,  
7 correct?

8 A Yes sir.

9 Q Yet several of these discussed that you just  
10 looked at calcium sulphate is on 253, 292, on 291, on  
11 290, et cetera. Many of those are calcium sulphate.

12 I'd like to hand you here a original copy,  
13 apparently, of a letter which is State of Indiana,  
14 State Board of Health, and it is signed by  
15 Roland P. Dove, director, Division of Sanitary  
16 Engineering. It shows a copy going to Industrial  
17 Disposal, Gary Development, Lake County Health  
18 Department, and Gary City Health Department, and is--  
19 says it's, "regarding disposal of calcium sulphate".  
20 And the letter is actually addressed to U.S.S. Lead  
21 Refinery, Inc. Does that type of letter, or that  
22 letter itself, look familiar to you?

23 A Yes sir.

24 Q And what do you consider this letter to be,

1 in your own words?

2 A It's given Mr. Hagen permission to accept the  
3 material.

4 Q Mr. Hagen permission to accept the material.  
5 Does it indeed show a copy going to Industrial  
6 Disposal?

7 A Yes sir, it does.

8 Q And why would that be so?

9 A Well we would also ask where to take the  
10 material. In other words, if we would use Mr. Hagen's  
11 landfill or Wheeler or Fort Wayne, Indiana, we would go  
12 down to Fort Morry's (ph) Landfill, Christian County  
13 Landfill, wherever he told us to take it, that's where  
14 we go.

15 Q Okay. And if you received, when you were  
16 with Industrial Disposal, did you receive other similar  
17 letters to this on other waste streams from the State  
18 of Indiana?

19 A Yes sir.

20 Q Okay. Now do you know who the Division of  
21 Sanitary Engineering was? State Board of Health. Does  
22 that have any relationship to the environment?

23 A I would imagine.

24 Q Okay. Do you know whether there was an

1 Environmental Management Board in Indiana during 1977?

2 To your knowledge.

3 A I really couldn't--

4 Q Okay. I'd like you to look at, and this may  
5 take a little bit of time, there's other types of  
6 wastes that's discussed here. The next one, and I  
7 can't read my copy. The invoice number has been  
8 punched out, but it's the one after 288, this tracking  
9 form has a different kind of waste and it's called,  
10 "cubic yards of battery cases".

11 A Yes sir.

12 Q And that also indicates "none" as far as  
13 special handling in the upper right hand corner?

14 A Right.

15 Q The next one is "yards of battery cases" and  
16 also has "none" in the upper right hand corner. It has  
17 a date of November 21, '80?

18 A Yes sir.

19 Q And the next one we're back to, it says, "a  
20 cubic yard solid calcium sulphate", and again has  
21 "none" in the upper right hand corner.

22 A Yes sir.

23 Q And I can't see the manifest number on that.  
24 The next one, we're back to "battery cases", is that

1 correct?

2 A Yes sir.

3 Q This one is dated November 20, 1980. Special  
4 Handling, what does this form show?

5 A "None."

6 Q Now, the next one is number 8664, as a  
7 tracking form invoice. And again it's correct, it says  
8 "U.S. Lead Refinery". It is a different waste  
9 evidently. It says, "A one to twenty" I believe it is,  
10 "cubic yard box of rubber battery chips"?

11 A Yes sir.

12 Q And it shows Gary Development being the  
13 facility it was taken to.

14 A Uh-huh.

15 Q And what did it say up in item two under  
16 special handling?

17 A It says, "Hazardous waste solid NOS-ID 9189  
18 Lead".

19 Q Okay. Is there any EPA RCRA type of number  
20 on there to your knowledge?

21 A I would guess that would be a number for  
22 U.S.S. Lead. I don't know if it would be--

23 Q (interrupting) For U.S.S. Lead?

24 A Yeah.

1 Q Okay. They would have put that on there?

2 A Yes sir.

3 Q They would have put "NOS" on there? Not your  
4 company?

5 A No.

6 Q Now I realize there are many of these here,  
7 but could you look through at least some of these of  
8 the next--there's many forms here--but up in the upper  
9 right hand corner, and see if you see anything  
10 different up in there on your form under special  
11 handling other than "NOS ID9189 Lead".

12 (Pause.)

13 A The only one I find here it says, "ID NA".

14 Q Okay. You're looking at number 2456, the  
15 number down here.

16 A Yes sir.

17 Q And it says what?

18 A "NOS ID", then it says, "NA 9189 Lead".

19 Q So it has an "NA" before the letters 9189?

20 A Yes sir.

21 Q That's different than the other ones you  
22 looked over?

23 A Yes sir.

24 Q Okay. Perhaps you continue, you're almost

1 done. I told you we weren't going to have you do all  
2 of them, but you're doing such a good job.

3 A Again we find on ticket number 2458, it has  
4 the same thing, "NA".

5 Q It has an "NA" in addition to the other  
6 description?

7 A "NOS ID NA9189 Lead".

8 Q Okay.

9 A Also a ticket number 2442. "NOS ID NA",  
10 which I don't know what the "NA" stands for.

11 Ticket number 2457 is the same. Ticket  
12 number 2453 is the same, "NOS ID NA9189 Lead." 2451,  
13 2452, 2461, 2446, 2445, 2444, 2443, 2459, 2460.

14 Q And that's the end.

15 A Yes sir.

16 Q Okay. So the ones you'd just read the  
17 numbers off of have the capitals "NA" in addition to  
18 the other information, is that correct?

19 A Yes sir.

20 Q Is that what you were identifying, so the  
21 record is clear on that? Those, the ones that have the  
22 "NA", most of those appear to have a 1982 date on them,  
23 if they have a date.

24 A Yes sir. They all look like they were signed

1 by the same guy, too, so it might have been--

2 Q Okay. Do you know what that name is?

3 John Ballereck (ph), B-A-L-something, right?

4 A Uh-huh.

5 Q B-A-L-O-C-I-K.

6 A B-A-L-O-C-I-K, right.

7 Q Right. And would it be correct from looking  
8 at these, at least going over them--

9 A (interrupting) It's all '82.

10 Q --that they're '82, the ones that have "NAs"  
11 on them.

12 A Yes sir.

13 Q Or they don't have a date. Some of them  
14 don't have a date on them.

15 A Or they don't have a date, right.

16 Q Okay. Now the fact that these--that this  
17 form that you developed said right at the top,  
18 "Hazardous Waste Tracking Form", I think what you're  
19 saying is that you used or Industrial used this for all  
20 the waste--

21 A (interrupting) Yes.

22 Q --during the period this form was used that  
23 they transported, regardless of whether it was  
24 hazardous or non-hazardous?

1           A     Yes sir.

2           Q     Okay. So the fact that it says "Hazardous  
3     Tracking Form", that doesn't mean that you defined the  
4     waste as hazardous or determined yourself that it is  
5     hazardous, is that correct?

6           A     What had happened was we had the forms  
7     printed and later on we changed it just for--it said,  
8     "Waste Tracking Form" because it is kind of misleading  
9     because it says "Hazardous". We weren't really  
10    obligated at that time to have such a form; we did it  
11    to protect ourselves basically of saying, you know,  
12    later on down the line like the state says we can go  
13    here, so we documented every load that went to each  
14    individual place.

15          Q     And I think I may have asked you part of  
16    this--could you then mark one of these.

17                               (Whereupon, Respondent's  
18                               Exhibit 18 was marked for  
19                               identification.)

20    BY MR. KREBS:

21          Q     But in your handling of waste during past  
22    years, has there been a difference of definition at  
23    times between the state and EPA as to hazardous versus  
24    special waste; waste that is regulated by the state,

1 but not under the Resource Conservation and Recovery  
2 Act?

3 A Say that one more time.

4 Q In other words, is there a waste in Indiana,  
5 that as a transporter, you would feel that you have to  
6 have approval from the state to dispose of it at a  
7 particular facility, even though you know it's not a  
8 RCRA hazardous waste; that you still need permission  
9 for disposal?

10 A We would basically get permission on just  
11 about everything we haul.

12 Q Okay. From the State of Indiana?

13 A Right. From the state. Very seldom--I can't  
14 even remember ever going to the region buyer.  
15 Basically the state were the federal guidelines, so  
16 they were always more stringent than the federal  
17 government's so the federal government's--that's okay.

18 Q Okay. I'm going to hand you back again this  
19 letter which we now marked as Exhibit 18, the letter of  
20 March 14, 1977 to U.S.S.--

21 A Lead.

22 Q I'm sorry, to U.S.S. Lead, with the copies  
23 showing going to Industrial as well as Gary Land  
24 Development. Would this be a letter giving approval,

1 in your opinion, for your company to take calcium  
2 sulphate waste and dispose of it at Gary Development?

3 A Yes sir.

4 MR. KREBS: At this time I'd offer into  
5 evidence Respondent's Exhibit 18.

6 MR. RADELL: May I look at the original?

7 MR. KREBS: The page is ripped.

8 MR. RADELL: I have no objections.

9 THE COURT: Number 18 is received.

10 (Whereupon, Respondent's  
11 Exhibit 18 was received into  
12 the record as evidence.)

13 MR. KREBS: That's all the questions we have  
14 of this witness.

15 THE COURT: Mr. Radell?

16 MR. RADELL: Yes.

17 CROSS-EXAMINATION

18 BY MR. RADELL:

19 Q Mr. McArtle, you testified that you developed  
20 this form?

21 A Yes sir.

22 Q Yes. And who filled in the boxes, the  
23 individual boxes? Did your company, the transporter,  
24 fill them in or did the generator or who filled in

1 the--

2 A (interrupting) The generator would fill it  
3 in.

4 Q The generator did. I'm going to show you  
5 some of this. Are these basically the same forms that  
6 Mr. Krebs was just showing you?

7 A Okay.

8 Q Do you know why--well in box 2, under  
9 "special handling instructions, if any" does it--what  
10 does it say in there for this manifest number 2449?

11 A "Hazardous waste solid, NOS ID NA9189 Lead  
12 D008".

13 Q Do you know what "D008" stands for?

14 A No sir, I don't. Unless that stands for door  
15 number 8 or something.

16 Q Okay. Do you know why under "special  
17 handling instructions" the words, "hazardous waste  
18 solid" would appear? What did that signify to you as a  
19 transporter?

20 A Well it would signify here it was a hazardous  
21 waste solid.

22 Q And that it was supposed to be dealt with any  
23 differently than other wastes, or--

24 A That would be according to the letter of the

1 landfill would just co-dispose.

2 Q Okay. Okay. These other manifests that you  
3 had previously discussed with Mr. Krebs, the ones that  
4 only say ID9189 Lead--

5 A (interrupting) Right.

6 Q --do you know why those say "Lead" in special  
7 handling instructions?

8 A I have no idea. Because again, the people,  
9 the generator would fill this out and of course this  
10 here and I think--I really can't--I think they have  
11 that stamp made too.

12 Q Okay. This stamp "Ed Peterson"--

13 A (interrupting) I can't read it from--

14 Q (interrupting) --description and quantity of  
15 waste shipment.

16 A Yeah, but I can't read it. Something,  
17 Department of Transportation.

18 Q Thanks. Okay. Mr. McArtle, do you have any  
19 background in chemistry or any sort of waste analysis  
20 procedures?

21 A No sir.

22 Q Okay. Are you aware whether or not these  
23 wastes from U.S.S. Lead have actually been tested or  
24 analyzed to determine whether they're not that

1 hazardous?

2 A Again, we relied on the State Board of Health  
3 to--

4 Q Okay--

5 A (interrupting) --our customer would do that  
6 themselves. In other words, like U.S.S. Lead would  
7 call the State Board of Health, and I imagine they  
8 would ask for some kind of a analysis and then we would  
9 say, well where can we go? And then they would send us  
10 back the letter which you have there in your hand.

11 Q So have you ever seen or reviewed any  
12 analyses of the waste generator at U.S.S. Lead?

13 A No, I don't believe so.

14 Q Okay. Have you ever had any discussions with  
15 Mr. Ted Warner of the Indiana Department of  
16 Environmental Management concerning the wastes from  
17 U.S.S. Lead?

18 A Ted Warner?

19 Q Yeah.

20 A It doesn't ring a bell.

21 MR. RADELL: Okay. I have no further  
22 questions.

23 MR. KREBS: We have no redirect of this  
24 witness.

1 THE COURT: Alright. Let's take about a five  
2 minute recess, shall we? And during that time, Mr.  
3 Radell, I would like to see what has been admitted,  
4 it's Complainant's 23, yes?

5 MR. RADELL: Okay.

6 THE COURT: Alright. In recess for 10  
7 minutes.

8 (Whereupon, a short recess was  
9 taken.)

10 THE COURT: Back on the record. Now with  
11 respect to number 23 and number 33, it immediately  
12 became apparent to me why these documents did not look  
13 familiar. It's quite simply that number 33 has been  
14 copied horizontally on the paper and number 23 was  
15 copied vertically on the paper. And they certainly are  
16 exactly the same thing, but they look a lot different.

17 I'm going to admit them, but I have all of  
18 the problems I had with these the first time.  
19 Nevertheless, because they are identical, I will admit  
20 them.

21  
22  
23  
24

1 (Whereupon, Claimant's Exhibit  
2 23 and Claimant's Exhibit 33,  
3 having been previously marked  
4 for identification, were  
5 received into the record as  
6 evidence.)

7 THE COURT: is there anything further on  
8 rebuttal, Mr. Radell?

9 MR. RADELL: Yes we would like to--actually I  
10 have to tell my case in chief and we had rebuttal. Now  
11 we would like to recall Larry Hagen to ask him some  
12 questions regarding the exhibits that were admitted  
13 into evidence today, being 31 and 33.

14 THE COURT: Mr. Hagen? The reporter will  
15 swear the witness.

16 Whereupon,

17 LAWRENCE HAGEN,  
18 having been previously duly sworn, was recalled as a  
19 witness herein and was further examined and testified  
20 as follows:

21 BY MR. KREBS:

22 Q Mr. Hagen, I first want to address  
23 Complainant's Exhibit 33, which was just admitted by  
24 Judge Greene, and I was looking back in the transcript

1 when you testified previously, which is Volume III  
2 dated September 11, 1987, and during the  
3 cross-examination by EPA Region V counsel, you were  
4 asked some questions regarding U.S.S. Lead waste and to  
5 refresh your recollection, I want to kind of start  
6 there, so I'd like to read just a couple of the  
7 questions and answers.

8 This is on page 761 and this was a question  
9 by opposing counsel. The question was on line 17, "Has  
10 Gary Development Company ever received any manifests  
11 from U.S.S. Lead? Answer: No. Question: If Gary  
12 Development Company had received any manifests from  
13 U.S.S. Lead, would you be aware of it? Answer: I  
14 would think so, yes sir. Question: Because prior to  
15 their destruction in the fire, you wouldn't be familiar  
16 with the manifests in your -- answer. I've seen the  
17 incoming tickets, our tickets on waste, was just, you  
18 know, a lot of times the hauler would identify where  
19 the material was coming from and it would say U.S.  
20 Lead. But that doesn't necessarily mean it was from  
21 any, you know, they had plant clean up in U.S. Lead.  
22 Question: I'm sorry, it doesn't necessarily mean what?  
23 Answer: Well it was definitely not a manifested load,  
24 but it may have said U.S. Lead on their waste tracking

1 form type thing. Question: Provided to you by the  
2 transporter or -- Answer: The hauler. Question: By  
3 the hauler? Answer: Yes. Question: And did you  
4 retain copies of those? Answer: No, we just signed  
5 it. It didn't--they had signatures on it. U.S.  
6 Reduction I believe used a similar system in their  
7 aluminum oxide dust." Now the next question on page  
8 763 has to do with American Chemical Services, so I'll  
9 stop there.

10 Now based upon that and your answers that you  
11 gave to opposing counsel back in September of '87 that  
12 I just read to you, is that still your testimony based  
13 upon everything you've heard in this case today?

14 A Yes it is.

15 Q Okay. So--and do you believe that's correct.

16 A Yes, I believe that's correct.

17 Q Why are you saying that the U.S.S. Lead waste  
18 was not manifested to you, but was--that did come to  
19 you on tracker forms.

20 A The forms that they have submitted and that  
21 I've looked at are a form of waste tracking form for,  
22 excuse me, special waste, which almost every load that  
23 Industrial Disposal hauled to us from whoever and  
24 wherever, from the many different companies they

1 serviced, they brought a waste tracking form, very  
2 similar to that or identical to that, I can't remember,  
3 which our people signed and it was like Dan McArtle had  
4 said, it was an assurance thing for them to their  
5 customer that their waste had been disposed of in a  
6 permitted landfill.

7 Q Okay.

8 A And everything we received from U.S. Lead I  
9 believe was on those copies and we accepted that as a  
10 non-RCRA hazardous, but as a special waste under  
11 authority or special waste definition from the State of  
12 Indiana.

13 Q Now Mr. McArtle identified a letter from the  
14 Indiana State Board of Health dated 1977, which is  
15 introduced into evidence I believe as Respondent's  
16 Exhibit 18, that also showed a copy going to Gary  
17 Development on the calcium sulphate waste.

18 A That's correct.

19 Q Are you familiar with that letter?

20 A That was my copy, yes.

21 Q The original that we copied was from your  
22 files?

23 A That's correct.

24 Q Okay. And what do you consider that letter

1 to be in your opinion?

2 A Authority for us to accept that waste as a  
3 special, which the state had a category called  
4 hazardous waste. It was not "hazardous", well at that  
5 point I--even after RCRA, they had waste that was  
6 considered a special or hazardous waste under state  
7 laws, but hazardous under state law was not hazardous  
8 under RCRA law.

9 Q Okay.

10 A We accepted that waste as a special waste  
11 under a waste tracking form.

12 Q In fact, previously in this case you  
13 discussed the state revoking or suspending some of  
14 Gary's approvals to take, let's call it special Indiana  
15 hazardous wastes.

16 A Certain special waste, yes sir, they did.

17 Q Okay. And that's the same--or similar type  
18 letter as Respondent's Exhibit 18?

19 A If--I'm not sure which one was 18.

20 Q A similar type waste or regulated waste as in  
21 Respondent's 18 which are coined "special waste".

22 A But the term Respondent's 18, 18 was that  
23 letter from--

24 THE COURT: I'm showing you--

1 THE WITNESS: (interrupting) I'm sorry.

2 THE COURT: --Exhibit 18 in evidence.

3 THE WITNESS: Yes sir, that's correct.

4 BY MR. KREBS:

5 Q Now at the last hearing date we did receive  
6 several copies from EPA counsel regarding forms that  
7 were called "Hazardous Waste Manifests, Jones &  
8 Laughlin Steel Corporation" regarding, although some of  
9 them don't say, tar decanter waste?

10 A Yes, I'm familiar.

11 Q Okay. And you went through, at least the  
12 ones you received back in September of '87 at the last  
13 day of the hearing during that week.

14 A (interrupting) Yes, I segregated them.

15 Q Okay. Getting back to this place, I want to  
16 refresh your recollection if I could. I think this is a  
17 question I asked you in direct examination originally.  
18 Yes it is. It's before cross. And the question was,  
19 "Now have you personally, have you personally, or do  
20 you ever recall yourself signing manifests  
21 acknowledging receipt to the best of your recollection?  
22 Answer: No, I don't spend any time in the ticket  
23 booth. I have other important things to do." Is that  
24 still, to the best of your recollection, that you did

1 not spend any time in the ticket booth?

2 A That's correct. I almost never was in a  
3 ticket booth. At the end of the day, they would bring  
4 the tickets from the ticket facility into my office and  
5 I would process the tickets.

6 Q Okay. Now out of all the manifest forms on  
7 this tar decanter waste, which were given to us in  
8 1987, was there anyone, and I think you may have  
9 already testified to this, that had your signature, or  
10 appears to be your signature?

11 A There was one on there that had my signature.

12 Q Okay. And that was during April of '81?

13 A If that's what it says.

14 Q Let me hand my copy to you.

15 A That's correct.

16 Q Okay.

17 THE COURT: Which number is it?

18 THE WITNESS: 01816.

19 THE COURT: Thank you.

20 BY MR. KREBS:

21 Q Did you find any other of those numerous  
22 manifests that were signed by you?

23 A No, I did not.

24 Q Okay. I'd like to hand you two manifests.

1 One is 0832, the other has a number 12752, the first is  
2 dated December 7th, '81, the second is dated October 1,  
3 '81 at the bottom.

4 And both have a signature of apparently the  
5 same individual and you've looked at these copies?

6 A Yes I have.

7 Q Do you recognize the name of that individual  
8 at the bottom signing as receiving that waste?

9 A No, I do not.

10 Q Is that an employee of yours, to the best of  
11 your--or Gary Development's--

12 A To the best of my knowledge, we never had an  
13 employee by that name.

14 Q Can you figure out what that name is?

15 A Well I made an attempt through this time, and  
16 at one point it looks like B-U-T-D-O-N, and the other  
17 one looks like B-R-A-D-D-A-N, but I've never heard of  
18 any--I made a note, "Jack somebody, unknown at this  
19 time".

20 Q Okay. Both of these have--somebody in these  
21 forms in a line on part B, the second line there is  
22 transporter number, ID number and they're scratched  
23 out, correct?

24 A That's correct, both of those.

1           Q     I want to hand you manifest number 12309,  
2     with a date at the bottom of August 17, '81, 12750,  
3     August 20th, '81, 01822, May 18th, '81, 01821,  
4     May 15th, '81, and 02080, the date of May 26th, '87,  
5     and have you looked at the signatures or whatever is on  
6     the bottom of those where it's supposed to be a  
7     signature, and let me ask you if you can identify any  
8     of those signatures or an individual who would have  
9     such a name.

10          A     The first three, which are numbers 12309,  
11     12750, and 01822 I cannot identify the signatures or  
12     don't know who they are. The next one is number 01821  
13     and 02080, and it appears to be M--maybe C--Lopez on  
14     one and M. Lopez on the other, and that was a driver  
15     from Industrial Disposal Company.

16          Q     I'd like to now hand you another group of  
17     these that you have segregated, these manifests with  
18     J&L, and these all at the bottom on the left hand side,  
19     well I think all of them, have a name which apparently  
20     is printed of Brian Boyd. The numbers are on the  
21     manifest 11125, March 8, '82, 02072, May 7, '81, 02073,  
22     May 18, '81, 01823, this one apparently does not have a  
23     date at the bottom, 03197, 6/26/81, 02078, 7/1/81,  
24     0832, 12/3/81, 12947, October, it looks like the 15th,

1 '81, and 08322, which does not have a date at the  
2 bottom of receipt by Gary. And I'll ask you, on those,  
3 have you determined whether or not the printing on  
4 those is printing by Mr. Brian Boyd?

5 A I myself could not vouch for that. I still  
6 had contact with this employee and I gave these to  
7 Brian Boyd and asked them, because some of these were  
8 written and some were printed, and I asked him, did he  
9 write his name sometimes and print it others, and were  
10 these ones that were printed his signature, and he said  
11 no.

12 Q Okay.

13 A He said he always wrote his name.

14 Q Did Mr. Boyd write out or print out for you  
15 his name on a--

16 A (interrupting) Yes.

17 Q --little sticker piece of yellow paper here?

18 A Yes he did, on this piece of paper, he  
19 printed his name the way, if he was going to print it,  
20 he would print it.

21 Q Now another group of these hazardous waste  
22 manifests that were provided to us in September of '83,  
23 I want to hand you, because you segregated these out  
24 also, and you segregated these out as being illegible.

1 Okay. And what do you mean by that?

2 A Well a lot of the times the form was  
3 illegible or the signature was illegible.

4 Q Okay. So did that mean that you felt that  
5 you really could not check these out because the copies  
6 you had were not good enough to do so?

7 A That's correct.

8 Q Okay. Can you just go through, and just  
9 forget the date on these, but just at the bottom, would  
10 you read into the record the number of the manifest for  
11 each one that you felt that you could not check out due  
12 to the poor quality of the copy provided to you?

13 A 01824, 0207 and it looks like a 9, it's cut  
14 off. 12308, 12307, 12306, 03069, 12303, looks like  
15 08568, but the bottom of the numbers are cut off on the  
16 copy, 08566, again bottom numbers cut off and the right  
17 side cut off, it looks like 08769, 08771, 08773, 08774,  
18 08772, 08775, 11128, 11126, 0832 and the last number is  
19 missing, or part of it's there, but I can't identify  
20 it. 11127. That's all.

21 Q Okay. Now there also were additional copies  
22 provided to Gary Development that had missing  
23 information as far as the material accepted, is that  
24 correct, such as 12305?

1           A     That's correct.

2           Q     It has a name and it has a printing of a  
3 Brian Boyd on it, but it doesn't say at the top--

4           A     (interrupting) It doesn't say what it is or  
5 where it's from.

6           Q     Is that also true of number 12945?

7           A     That's correct.

8           Q     And 12946?

9           A     That's correct.

10          Q     Okay. So this is--and here's another, 01825.

11          A     That's correct.

12          Q     03200

13          A     Yes. It's blank.

14          Q     What--02077. It's blank at the top.

15          A     It's blank at the top and the signature at  
16 the bottom is totally unreadable.

17          Q     It has a signature for the transporter?

18          A     It looks like, yes.

19          Q     Would there be any reason for Gary  
20 Development to--or Mr. Boyd on your behalf, I guess  
21 these are in Mr. Boyd's, some of them are signatures,  
22 some are printed.

23          A     Uh-huh.

24          Q     Would there be any reason for Mr. Boyd to

1 sign that Gary Development received waste on a manifest  
2 that doesn't even describe what the waste is?

3 A No, there would be no reason, but we didn't  
4 get the top part of the form. We signed the bottom  
5 part of those forms and we presumed they were waste  
6 tracking forms because every load that came into that  
7 landfill hauled from industrial sources all came with a  
8 waste tracking form. And I can name five or six  
9 companies that this was from. And we were presented a  
10 bottom part of a form as a waste tracking form, he  
11 signed them, but it--until this procedure started, and  
12 when I showed these forms to Brian Boyd that indicate  
13 tar decanter sludge, I also showed these forms to my  
14 son, who you have his signature on there, everyone was  
15 in amazement and said what is tar decanter sludge,  
16 because they had never seen the top part of that form;  
17 all they'd seen is the bottom part.

18 Q This form that you marked as illegible, for  
19 example, which is---has the manifest number, I guess it  
20 has two numbers at the bottom. It has document number  
21 7302 then it has a bigger number 01824, there's a date  
22 at the bottom on this particular one of May 28, '81,  
23 correct?

24 A That's correct.

1           Q     Okay. And is it apparent to you on this copy  
2 at least that you received, that there has been a  
3 division between the top part A and part B of this  
4 form?

5           A     Certainly. The top--you had two pieces laid  
6 in a copier and copied. Part B is even crooked on the  
7 page here.

8           Q     So those would not, in your opinion, be  
9 attached?

10          A     They were not attached, no.

11          Q     Does the next document appear also to have  
12 been two separate documents put on a copying machine,  
13 02079?

14          A     It appears so. You can see the line here  
15 where the end of the one copy and the beginning of  
16 another.

17          Q     And how about the next document, 12308?

18          A     Yes. You can see the line where the two  
19 documents were separated, laid on a copier, and copied  
20 as one.

21          Q     Part A and Part B.

22          A     That's correct.

23          Q     Is that because they aren't put down exactly  
24 where they would be together?

1           A       I would think so, yes.

2           MR. KREBS: I wanted to offer into evidence  
3 what has now been marked as Respondent's Exhibit 19.

4                               (Whereupon, Respondent's  
5                               Exhibit 19 was marked for  
6                               identification.)

7           MR. KREBS: It is--it's been identified, but  
8 not as 19 by the witness. They are the documents which  
9 he identified as being a printed, signature I guess, a  
10 printed signature by Brian Boyd, which has on several  
11 manifests which were identified and has attached to it  
12 what Mr. Hagen has stated is the actual printed  
13 signature of Mr. Brian Boyd.

14           THE COURT: Have you shown this to--

15           MR. KREBS: (interrupting) Yes.

16           THE COURT: --Mr. Radell?

17           MR. RADELL: Yeah, I'm going to object to the  
18 admission of at least the attachment, the yellow  
19 sticker. At least it appears as if there are two  
20 different writings on there, fairly two different pens  
21 were used, and it appears to have been written by two  
22 different people, the writing on that little yellow  
23 sticker. There is no actual signature by Mr. Boyd, so  
24 we don't really know if that is--he indeed did write

1       that document. There is no certification, it's on no  
2       letterhead. It's just a little yellow Post-it with  
3       some writing on it by, apparently by a couple different  
4       people. So I'm going to object to the admission of  
5       that.

6                 MR. KREBS: Maybe we could play that up.

7       BY MR. KREBS:

8                 Q       On the yellow Post-it, he is correct, there  
9       are two printings of Brian Boyd.

10                A       That's correct.

11                Q       On the top it says, "Brian Boyd" printed.  
12       Who printed this out?

13                A       I did. I--first I showed the forms to  
14       Brian Boyd, asked him, did he print this or did he  
15       write this or did he normally write everything or print  
16       everything. He said he normally wrote his name on all  
17       waste tracking forms. Then I made the notation here,  
18       "Brian Boyd, printed, not his printing" and then before  
19       I left I said, "would you print your name then if you  
20       were going to print it", and that's what the blue ink  
21       is on there. He printed that.

22                Q       Okay. So the bottom where it says,  
23       "Brian Boyd", it's in blue ink, that's printed by  
24       Brian Boyd--

1           A     (interrupting) That was printed by  
2 Brian Boyd in front of me, yes.

3           Q     You saw him do that?

4           A     Yes I did.

5           Q     Okay.

6           MR. KREBS: We would re-offer into evidence  
7 Respondent's Exhibit 19.

8           THE COURT: May I see it please?

9           MR. KREBS: Certainly.

10          THE COURT: Alright. So Mr. Hagen, the first  
11 two lines which appear to be in ball point are your  
12 notes?

13          THE WITNESS: In black, yes ma'am.

14          THE COURT: And the blue is Mr. Boyd's  
15 printing as though he were going to print it. Alright.  
16 I will receive number 19 with the attached Post-it  
17 stapled in the corner.

18                               (Whereupon, Respondent's  
19                               Exhibit 19 was received into  
20                               the record as evidence.)

21          MR. RADELL: May I obtain a copy of that  
22 before this proceeding is over?

23          THE COURT: Yes indeed. Mr. Krebs, you will  
24 see to that, please.

1 BY MR. KREBS:

2 Q I want to go back to the document that you  
3 said your signature appears on, L. Hagen, and the  
4 number is 01816, with the date of 4/13/81. Is the  
5 printing 4/13/81 your printing?

6 A Yes it is.

7 Q Okay. Now looking at this form as a whole,  
8 with again, part A and part B, if you look at that  
9 carefully, can you determine whether or not that is one  
10 piece of paper or whether it is two pieces of paper  
11 that have been put down on a copying machine to make  
12 this photocopy?

13 A I believe it to be two pieces of paper put  
14 down. You can see the separating line on the bottom  
15 where the two pieces were put together.

16 Q Where do you see that? Point it out.

17 A Right--

18 Q (interrupting) Describe it on the record.

19 A --at the--above where it says part B, it  
20 says, "transporter #1 signature", and then there's a  
21 little thing on the sid that says, "UE1" and right  
22 across from it, if you follow across, there's a  
23 partially, you might call it a perforated line, where  
24 it looks like there's the two pieces were put together

1       there.

2               Q       Okay. Do you ever recall to the best of your  
3       recollection, seeing the top part, the part A of this  
4       form 01816?

5               A       No sir, I did not see these until they were  
6       given here in court.

7               MR. KREBS: That's all the questions I have  
8       of this witness.

9               THE COURT: Mr. Radell?

10              MR. RADELL: Yes, just a moment.

11                               CROSS-EXAMINATION

12       BY MR. RADELL:

13              Q       Mr. Hagen, regarding the manifest forms which  
14       you've just discussed with Mr. Krebs, the one with your  
15       signature at the bottom, the ones that you just  
16       testified they appear to be two pieces of paper placed  
17       together on the same page.

18              A       Yes.

19              Q       Could you please, the bottom section that's  
20       marked part B, does it appear as if these two forms may  
21       have been attached at one point?

22              A       I don't know. How would I tell that?

23              Q       Well could you read what it says at the top  
24       of--

1           A     (interrupting) Oh, tear at perforation.  
2     Okay.

3           Q     Mr. Hagen, have you ever reviewed any  
4     analyses of the waste generated by U.S.S. Lead or J &  
5     Laughlin?

6           A     Reviewed when, sir?

7           Q     Any--excuse me?

8           A     Reviewed when?

9           Q     When--well at the time that Gary Development  
10    Company allegedly received those wastes in the--that  
11    would be in the early 1980s.

12          A     No. There was never any--on U.S. Lead there  
13    was never anything submitted to us because we accepted  
14    the stuff as a non-hazardous waste, as a special waste.

15          Q     And what about for Jones & Laughlin Steel?

16          A     On which waste stream, sir? That K087?

17          Q     On either the--yeah, the K087.

18          A     No, never.

19          Q     Okay.

20          A     But you asked me a question that I just  
21    answered that you said did I review the analysis on it.  
22    At this point, we had never heard the word "tar  
23    decanter sludge".

24          Q     Uh-huh. What about for the battery chips and

1 the calcium sulphate sludge from U.S.S. Lead?

2 A I had seen the documents that we have our  
3 people's signature on that said battery chips and  
4 calcium sulphate, but I had never seen an analysis on  
5 it.

6 Q Okay. I'd like to show you some of the  
7 manifests from Industrial Disposal Corporation  
8 regarding U.S.S. Lead. To you--could you explain what,  
9 if anything, the words "hazardous waste solid" or "Lead  
10 D008" mean to you as they appear in the box marked,  
11 "special handling instructions"?

12 A As they appear to me now, or in 1980?

13 Q Well both.

14 A Okay. Now I would know that D008 means the  
15 government's definition of something that contains  
16 lead. Back then I don't think I would have known that.  
17 It doesn't say what kind, what percentage of lead or  
18 anything else. It just said it contains lead.

19 Q Okay. Thank you.

20 (Pause.)

21 MR. RADELL: I think we have no further  
22 questions.

23 THE COURT: Mr. Krebs, anything--

24 MR. KREBS: (interrupting) I have no

1 redirect of this witness.

2 THE COURT: You're excused, Mr. Hagen, thank  
3 you.

4 (Whereupon, the witness was  
5 excused.)

6 THE COURT: Anything further on your case,  
7 Mr. Krebs?

8 MR. KREBS: We have nothing further. We  
9 would rest our case at this time, Your Honor.

10 THE COURT: Mr. Radell, any further--

11 MR. RADELL: I had a brief closing statement.  
12 I have no further evidence, though.

13 THE COURT: Alright. Now if the parties wish  
14 to make closing statements, I will certainly be pleased  
15 to hear it. If they wish to brief the matter, I will  
16 be happy to receive briefs. What is your pleasure,  
17 counsel? Mr. Radell?

18 MR. RADELL: I'm prepared to make a brief  
19 closing statement and I don't really believe that a  
20 post-hearing brief is necessary based upon the  
21 evidence, but if the Court or opposing counsel believes  
22 it's necessary, I'd be happy to comply.

23 MR. KREBS: I think that my opinion is, Your  
24 Honor, that although I love to talk, as many lawyers

1 do, there's no jury here. I can make a closing  
2 argument, but I would prefer to put our arguments into  
3 brief form, which I think would give the Judge a better  
4 opportunity to look at the issues and to compare the  
5 briefs, and to make a decision on those types--using  
6 those types of documents as some type of a guidance, as  
7 opposed to merely an oral argument that's going to be  
8 transcribed in the record.

9 The other thing is, which I think we're all  
10 aware of because of the period between trial days here,  
11 I think--I know it's been difficult for me to get  
12 myself reorganized and back into this case, and I think  
13 that under those circumstances, that it would be well  
14 worth it for both parties to brief their case, which is  
15 going to take some time. It's going to take some time  
16 going over the transcripts, which there's probably four  
17 or five volumes of, or will be. But because the  
18 numerous documents and the different types of waste  
19 stream; for example, J&L we've got three, in like three  
20 different types and I think it would be well worth it  
21 for both of us to brief the case. So that would be my  
22 proposal.

23 And I would think on time-wise, I would  
24 probably need, at least until, quite honestly, at least

1     until the end of January to get a brief to you because  
2     of the holidays coming up and I've got another trial  
3     set in January in a different matter that's going to go  
4     to trial, and with that, I think it's probably going to  
5     take me until the end of January to put together a good  
6     brief in this case.

7             THE COURT: Well, you will have at least  
8     until the end of January because, in the first place, I  
9     don't expect to receive the transcript before  
10    Christmas. Christmas holidays being what they are, I  
11    would assume we would see it sometime during the first  
12    part of January. Therefore, a briefing by the end of  
13    January seems to me to be a little too soon. Apart  
14    from that, I'm not sure that I can get to the matter  
15    before the end of January, so you may as well have the  
16    extra time.

17            I think the best procedure here with respect  
18    to post-trial briefs is for us to have a brief  
19    conference after the transcript comes in, at which  
20    point we will know exactly where we stand, and we can  
21    set the brief dates with everyone's schedule in mind.  
22    I would think the time would be not less than a month  
23    after the transcript comes in, but depending upon my  
24    schedule, it might even be a little longer than that.

1           Now beyond that, this is one of the  
2           circumstances where both counsel get to do what they  
3           want to do. You don't see this very often.

4           Mr. Radell, I will--

5           MR. RADELL: (interrupting) Well, no, I'll  
6           waive the need to make the close.

7           THE COURT: Well if you have one ready, I'll  
8           be happy to hear it.

9           MR. RADELL: No, I don't think it'll be  
10          necessary if I'll be submitting a post-hearing brief.

11          THE COURT: Alright. You had the opportunity  
12          to do what you wanted to do.

13          MR. RADELL: I appreciate it.

14          THE COURT: And you waived it.

15          Now then, I propose to turn the exhibits that  
16          have been admitted today over to the court reporter.  
17          These documents will be transmitted to the hearing  
18          clerk in Region V when the transcript is sent in. At  
19          that point, I will call for all the original exhibits,  
20          and the decision will be based upon what was admitted  
21          into evidence, and not upon some of the xeroxed copies  
22          that we've had; not all of the copies--they don't  
23          match, it seems to me in this case, more than any case  
24          I have seen. So I will call for the original exhibits.

1           There being nothing further, the matter is  
2 adjourned for today. Thank you.

3           MR. KREBS: Thank you.

4           (WHEREUPON, THE HEARING IN THIS MATTER WAS  
5 CONCLUDED AT 11:55 A.M., TUESDAY,  
6 DECEMBER 18, 1990.)

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, ANNE I. MAZIORKA, a Notary Public within and  
for the County of Cook and State of Illinois do hereby  
certify:

That previous to the commencement of the examination of the witnesses, the witnesses were duly sworn to testify the whole truth concerning the matters herein;

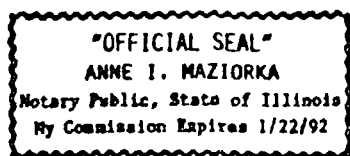
That the foregoing transcript was reported to me by electronic audio sound recording, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given;

That the said hearing was taken before me at the time and place specified;

That the hearing was adjourned as stated herein;

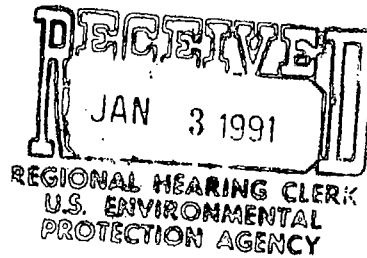
That I am not a relative or employee or attorney or counsel, not a relative or employee of such attorney or counsel for any of the parties hereto, not interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand and  
affix my seal of office at Chicago, Illinois, this 31<sup>st</sup>  
day of December, 1990.



1990.  
*Anne I. Maziorka*  
 ANNE I. MAZIORKA  
 Notary Public, Cook County, IL

My Commission expires 1/22/92.



VOLUME IV

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

In the Matter of:	)	
	)	
GARY DEVELOPMENT CO., INC.	)	
	)	Docket No. RCRA-V-W-86-R-45
Respondent.	)	
	)	

Courtroom 302  
Lake County Courthouse  
400 Broadway  
Gary, Indiana

Monday, December 17, 1990

The above-entitled matter came on for further  
hearing, pursuant to adjournment, at 2:00 o'clock, p.m.

BEFORE: HONORABLE J.F. GREENE  
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant, U.S.  
Environmental Protection Agency:

MARC M. RADELL, ESQ.  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street - 5CSTUB3  
Chicago, Illinois 60604

On Behalf of the Respondent:

WARREN D. KREBS, ESQ.  
Parr, Richey, Obremskey & Morton  
121 Monument Circle - Suite 500  
Indianapolis, IN 46204

I N D E XTESTIMONYWITNESSES:DIRECT   CROSS   REDIRECT   RECROSS

DR. TERRY RONALD WEST            809        844

EXHIBITSEXHIBIT NUMBER      MARKED      RECEIVED      REJECTED      WITHDRAWNRespondent's:

15	808	813		
16	856	857		
17	856	857		

1           THE COURT: This is the matter of Gary  
2 Development Company of Gary, Indiana, a continuation of  
3 Docket Number RCRA-5-W-86-R-45. Let's have a  
4 restatement of appearances by counsel. For the  
5 Government?

6           MR. RADELL: Yes. I'm Marc Radell  
7 representing the U.S. EPA.

8           THE COURT: And who is with you, Mr. Radell?

9           MR. RADELL: Mr. Jonathan Cooper of our RCRA  
10 Enforcement Staff.

11          THE COURT: For Respondent?

12          MR. KREBS: For the Respondent Gary  
13 Development Corporation, Inc., Warren D. Krebs with the  
14 firm of Parr, Richey, Obremskey & Morton at  
15 Indianapolis, Indiana. With me today at the table is  
16 Larry Hagen, who is a vice-president of Gary  
17 Development.

18          THE COURT: Will there be an addition to the  
19 documents that we have already before we take our first  
20 witness? Is there anything further by way of  
21 documents, Mr. Krebs, before we take your witness? I  
22 don't expect anything from you, but just in case.

23          MR. KREBS: As far as documents to mark?

24          THE COURT: Yes.

1 MR. KREBS: You mean--we might want to mark  
2 just the next witness' background document. I think  
3 that would be around 12. I'm not sure of that.

4 THE COURT: We had a number 14--

5 MR. KREBS: (interrupting) We did?

6 THE COURT: --in our earlier proceeding,  
7 Mr. Krebs. This would be next in order, whatever that  
8 may be. Probably 15.

9 (Whereupon Respondent's  
10 Exhibit 15 was marked for  
11 identification.)

12 THE COURT: Well I think we're ready for  
13 Dr. West.

14 MR. KREBS: Yes.

15 THE COURT: Call your witness.

16 MR. KREBS: Respondent would call Terry West  
17 please.

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1 Whereupon,

2 TERRY RONALD WEST,

3 called as a witness herein, having been duly sworn and

4 having testified, was examined and testified as

5 follows:

6 DIRECT EXAMINATION

7 BY MR. KREBS:

8 Q Would you state your name please for the  
9 record?

10 A Terry Ronald West.

11 Q And Mr. West, what is your present  
12 profession?

13 A I am a university professor at Purdue  
14 University, West LaFayette, Indiana.

15 Q And how long have you been a professor at  
16 Purdue University?

17 A I've been on the professorial staff since  
18 1966 at Purdue University.

19 Q Okay. And what type of professorship do you  
20 hold at the present time?

21 A I'm an associate professor in the Earth and  
22 Atmospheric Sciences Department and have a joint  
23 appointment with Civil Engineering.

24 Q Okay. Can you please explain briefly you

1 educational background as far as universities and  
2 degrees held?

3 A Yes. I have a bachelor's degree in Geology  
4 from Washington University in St. Louis. I also have a  
5 bachelor's degree in Geological Engineering from the  
6 same university and a master's degree in Geology;  
7 that's at Washington University. At Purdue University,  
8 I have a master of science degree in Civil Engineering  
9 and my Ph.D. is in Engineering and Geology.

10 Q Are you a registered professional engineer?

11 A Yes I am.

12 Q And in what state are you so registered?

13 A In the State of Missouri.

14 Q That is where Washington University is?

15 A That is correct.

16 Q Dr. West, are you a member of any  
17 professional societies that you participate in on a  
18 regular basis?

19 A Yes I am.

20 Q Can you give us a few of those?

21 A I'm a member of the Association of  
22 Engineering Geologists. I've served as the chairman of  
23 the North Central Section, which meets in Chicago on a  
24 regular monthly basis, and I'm a member of the

1 Geological Society of America. I'm a member of the  
2 American Society of Civil Engineers, a member of the  
3 American Society for Testing and Materials, a member of  
4 the Indiana Academy of Science and also of the American  
5 Geophysical Union.

6 Q Regarding the Geological Society of America,  
7 have you, during the 1980s, made any presentation and  
8 publications related to sanitary landfills and their  
9 geology?

10 A Yes I have. On several occasions at the  
11 annual meetings, which were held typically early in  
12 November of each year, I've given papers on sanitary  
13 landfills, typically in the Indiana area.

14 Q Can you give us some examples of those  
15 please?

16 A Yes. In 1986 I gave a paper at the  
17 San Antonio, Texas meeting and it was titled, "Fracture  
18 in Glacial Till Related to Increased Permeability and  
19 Concern for Sanitary Landfill Siting in Central  
20 Indiana". In 1985 at the Geological Society of America  
21 meeting in Orlando, Florida, I gave a paper titled,  
22 "Engineering Geology and Ground Water Considerations  
23 for Sanitary Landfills in Wisconsin-Aged Morainal  
24 Deposits of Central Indiana". And in 1985 I gave a

1 paper for the Indiana--excuse me, Indianapolis Center  
2 for Advanced Research, and that was a paper among a  
3 group of people there at that meeting, the Conference  
4 on Groundwater Monitoring and Remedial Methods. The  
5 paper was titled, "Engineering Geology of Landfill  
6 Sites Regarding Installation of Monitoring Wells". And  
7 then also in 1986 I gave a paper at the North Central  
8 Section Meeting of the Geological Society of America  
9 and that was entitled, "Hydrogeology Problems of Solid  
10 Waste Disposal Regarding Glacial Till Stratigraphy in  
11 Indiana". So those are some of the recent papers that  
12 I've given in that particular subject.

13 Q Regarding your teaching at Purdue University,  
14 do you teach any courses which are specifically related  
15 to solid waste disposal?

16 A Yes I do. Each Fall I teach a course called  
17 "Geology of Sanitary Landfills". I've taught it now  
18 for I believe five years, each Fall for five years. I  
19 also teach several other courses in the field of  
20 Engineering Geology, which is, I guess, the primary  
21 description of my area of expertise, and I teach an  
22 undergraduate and several graduate courses in  
23 Engineering Geology, which relate to groundwater  
24 contamination and solid waste disposal in some fashion

1 or another.

2 Q I'm going to hand you what was marked for  
3 identification purposes as Respondent's Exhibit 15 and  
4 ask if you can identify this.

5 A Yes I can identify that.

6 Q And what is it?

7 A That's my own resume or vitae in abbreviated  
8 form that lists my background and specialty areas,  
9 membership in professional societies and a list of  
10 selected papers on several different categories.

11 Q Okay. And this was prepared by you?

12 A That is correct, yes.

13 Q Okay. And is everything in there correct to  
14 the best of your recollection?

15 A As best as I know it right now, yes it is.

16 MR. KREBS: Okay. Your Honor, as opposed to  
17 asking the witness other questions regarding his  
18 professional background, we would instead offer into  
19 evidence Respondent's Exhibit 15.

20 MR. RADELL: I have no objection.

21 THE COURT: Number 15 is accepted.

22 (Whereupon, Respondent's  
23 Exhibit 15 was received into  
24 the record as evidence.)

1                   MR. KREBS: Would you mind handing that to  
2 the Judge please?

3 BY MR. KREBS:

4                   Q     Dr. West, at the university, are you in  
5 charge of programs also for students who are seeking  
6 Ph.D.s and/or master's degrees, or is your teaching  
7 strictly underclass?

8                   A     No, I teach both graduate and undergraduate  
9 courses and I also am the research advisor for a number  
10 of students at both the masters and the Ph.D. level.

11                  Q     Okay. Are you familiar with the Gary  
12 Development Sanitary Landfill Facility in Lake County?

13                  A     Yes I am.

14                  Q     Okay. And can you tell us have you ever been  
15 on the site of the facility?

16                  A     Yes, I visited the site on three different  
17 occasions. The first time was on August 6th, 1987.  
18 The second time was on August 27th, also 1987, and at  
19 that time Jon Cooper and Ted Warner were visiting the  
20 site as well. And then the third time I visited just  
21 recently was on December 12th, 1990.

22                  Q     Other than the three occasions that you've  
23 discussed being present at the facility, have you been  
24 familiar with the area of Gary Development where the

1 facility is?

2 A Yes I have. I've been aware of that  
3 particular area adjacent to Lake Michigan, and I'm also  
4 quite aware of the different, what we call  
5 physiographic divisions, or the types of land forms  
6 that occur in the State of Indiana, which is an  
7 integral part of the teaching program in applied  
8 geology and civil engineering. So I'm generally aware  
9 of the regional aspects. And then I've become aware of  
10 some of the specifics of some of the site in addition  
11 to actually looking at the Gary Development Landfill.

12 Q Have you ever done a paper or a presentation  
13 regarding the area where the landfill is located, but  
14 not specifically regarding landfill?

15 A Yes I have. I had the opportunity several  
16 years ago at an organization called the Highway Geology  
17 Symposium. It was in August of 1988. And that  
18 particular conference dealt with highway construction  
19 in urban areas and on the basis of that, I looked into  
20 this particular location because the fact it's where  
21 the new interchange was constructed on the tollroad,  
22 the Indiana Tollroad System. And what had happened in  
23 the mid-1980s I think it opened--it actually, the  
24 interchange there opened in October of 1986 and what

1       happened is because to increase traffic, local traffic  
2       on the Indiana Tollroad, it was decided by the tollroad  
3       commission people to put in additional interchanges  
4       which would encourage localized traffic for people to  
5       get on at say Gary and drive to East Chicago or to  
6       encourage local traffic. And part of that development  
7       process was to build a number of interchanges. As it  
8       develops, as it turns out, one interchange is  
9       immediately to the east of the Gary Development  
10      Landfill. Well on the basis of that, I looked into the  
11      existing information on the design and construction of  
12      that landfill, and related it to the geological  
13      features of that site, which includes some aspects of  
14      the organic deposits that were there and some of the  
15      old landfill materials and just the general  
16      construction aspects of putting in the toll plaza and  
17      the exit there at Cline Avenue. That's the location,  
18      Cline Avenue.

19           Q     In connection with that study that I think  
20      you said in 1988 nearby the landfill, Respondent's  
21      landfill, and in connection with your investigation of  
22      the landfill itself, do you have information as to the  
23      geology of the site, of the Gary Development site?

24           A     Yes I do. I have, both on the basis of the

1 reports that were available for the tollroad  
2 construction and also available for the landfill site  
3 itself, and the geological situation is that in some  
4 areas there's about 5 feet of fill material at the  
5 surface, and then typically about 35 feet of sand. And  
6 below the sand, of the order of 50 feet of clay and  
7 then below that another 10 feet of very dense other  
8 clay material called glacial till. And at that point  
9 the bedrock is reached, which is about 100 feet deep  
10 and you hit the Racine Dolomite, typically the  
11 geological formation there is the Racine Dolomite of  
12 silurian age that occurs at that particular site.

13 Now the history of the landfill, which is  
14 revealed in the construction report for the toll plaza  
15 adjacent to it, was that basically 35 feet of the sand  
16 was removed in the process of making a gravel pit to  
17 construct the tollroad. That's the reason that the  
18 gravel pit was excavated there was for construction  
19 material for the tollroad extension. And then in  
20 addition to the sand, 30 feet of clay was excavated  
21 below that, making this pit of approximately 65 feet  
22 deep.

23 Now because of the thick nature of the clay  
24 there, there is another 35 feet of clay below the base

1 of the landfill before you reach the top of the bedrock  
2 surface, which is as I said, the silurian dolomitic  
3 rock that occurs at a depth at approximately 100 feet.

4 The water table depth was approximately 10  
5 feet below the original ground surface at the time  
6 prior to construction. And I think that's fairly  
7 typical of the area at the present time, so the water  
8 is about 10 feet down, which is about the level of the  
9 Grand Calumet River. So we have that particular  
10 aspect.

11 The landfill was begun in about 1974, after  
12 the excavation of the gravel had taken place some years  
13 before that and had filled up with water. So the  
14 gravel pit was pumped dry and then a clay lining was  
15 placed around the opening to prevent additional water  
16 from coming into it because the fact that it's 35 feet  
17 in the sandy material and the water is only 5 feet  
18 deep, there would be a tendency, obviously, for the  
19 water to come in below the 5 foot depth. And to keep  
20 the water from flowing in, to be able to pump it out, a  
21 clay liner was placed inside of the excavation. So  
22 that's the nature of the construction of the basin in  
23 which the landfill was eventually constructed.

24 Now the fact that there is 30 feet of clay at

1 the base of the landfill above the dolomite bedrock is,  
2 by the standards of the time of construction and pretty  
3 much today, is a good liner system for a conventional  
4 landfill, conventional solid waste landfill. With 30  
5 feet of clay at the base would meet the requirements  
6 certainly of the Indiana Department of Health at the  
7 time that this landfill was constructed and designed  
8 and is a sizeable thickness even by the most recent  
9 standards that we would have of having thirty feet of  
10 clay below the base of the landfill.

11 So by having a natural material to prevent  
12 downward migration, and therefore, having built the  
13 clay lining on the outside on the boundary of the old  
14 sand pit, it was able to construct the landfill such  
15 that water is kept out of the landfill itself.

16 Q Regarding the clay liner you're talking about  
17 on the sides of the landfill, have you looked into the  
18 composition of that liner and the permeability of the  
19 clay material?

20 A Yes. A study was done by Atec Associates  
21 under the direction of Gary Development as a  
22 requirement as indicated by the State of Indiana. They  
23 put four borings down along the western side of the  
24 landfill and drilled through the liner to determine the

1 nature of the liner material. At one point as I  
2 reviewed the information, there was a suggestion made  
3 that the boring should be made perpendicular to the  
4 liner system, and the liner itself is inclined because  
5 if you excavate a hole in sand, in order for the sand  
6 to have any opening, retention, you have put it on an  
7 angle. So the liner is on a slant, and consequently,  
8 the liner is not horizontal, but is inclined.

9 The borings were made perpendicular to the  
10 earth's surface, or vertical. Vertical borings were  
11 made, and they did not obviously therefore run  
12 perpendicular to the liner, although some suggestions  
13 had been made by the Indiana State Board of Health that  
14 they should be drilled perpendicular to that. I just  
15 realized looking at this, that this is virtually  
16 impossible to do with standard equipment to take soil  
17 borings perpendicular to an inclined liner. Soil  
18 borings of split spoon samples and Shelby tube samples,  
19 which were required, have to be taken very close to the  
20 vertical because it's a gravity system that gets its  
21 power by driving it vertically into the ground.

22 But at any rate, the four tests were made by  
23 Atec Associates and they obtained permeability values  
24 that were much lower than what had been the required

1 permeability of this particular liner.

2 Q Dr. West, admitted into evidence previously  
3 in this hearing, and I believe it was Respondent's  
4 Exhibit #4, was a certified copy of a settlement  
5 agreement, an agreed order in cause number N-95 between  
6 the Respondent and the Indiana Environmental Management  
7 Board dated February, 1983. And on page 5 it discusses  
8 in that exhibit specifically the borings that were to  
9 be done and says that, "If the test results show the  
10 permeability of the clay wall to be  $5.0 \times 10^{-6}$   
11 centimeters per second or less, then no remedial action  
12 for the west clay perimeter wall will be required  
13 unless staff identifies a significant infiltration of  
14 liquid as discussed in subparagraph 7C."

15 So the standard here, it says it's  $5.0 \times 10^{-6}$   
16 centimeters per second or less. Based upon the  
17 Atec borings and their report, how do the actual  
18 permeabilities of the clay in the liner compare to that  
19 figure in the state agreed order?

20 A Of their four tests, the numbers, which I  
21 don't have precise numbers with me in front of me, but  
22 the values range in the  $10^{-7}$  centimeters per second, to  
23 the  $10^{-8}$  centimeters per second. So considerably lower  
24 permeability than the required  $5 \times 10^{-6}$ .

1           By comparing the numbers, I found that the  
2       clay tests, their permeabilities range from 8 to 208  
3       times less permeable than the requirement, so that  
4       before tests were markedly or considerably lower in  
5       permeability than the requirements, so therefore,  
6       better materials than the requirements asked for.

7           Q     Are you familiar with anything in the--that  
8       would be considered a aquifer as relates to, let's say,  
9       water wells in the area or on site wells used for  
10      production of water?

11          A     Well by definition, an aquifer is a zone in  
12      the earth that's saturated with water and has a  
13      sufficient permeability to develop a well. On the  
14      basis of that, the sand layer that is at the surface  
15      that has a water table a depth of five feet would be  
16      considered an aquifer. That is a complication, of  
17      course, in this area of Gary because of the general  
18      nature of all of the industrialization adjacent to that  
19      and the Big Calumet River on top of the other aspects  
20      is such that one would not typically think of that as  
21      an aquifer for water production for water quality  
22      because of the overall nature of the industrial aspects  
23      on the site. So aquifer, from the permeability and  
24      saturated point of view, potable water, likely no, just

1 because of the nature of the heavy industry that's been  
2 there for many, many years. But that would be what  
3 would be considered as typically an aquifer system  
4 relative to its permeability.

5 Q Is there a water producing well at the site  
6 itself to your knowledge?

7 A Yes. There is a water producing well for the  
8 Gary Development Company which is considerably deeper,  
9 extending down into the bedrock. In fact, it was  
10 extended down to a depth, according to my information,  
11 of 440 feet from the surface, which would have put it  
12 some 340 feet down into the bedrock. This is due to  
13 the fact that there was not good permeability in the  
14 rock up close to the base of the glacial material. And  
15 so it was extended below 100 feet depth until a  
16 sufficient amount of water was obtained.

17 Now that's somewhat encouraging to me as a  
18 hydrogeologist because of the fact that it tends--it  
19 indicates that the downward migration of material  
20 through the unconsolidated, through the soil material,  
21 is not great, or there would be more water at the upper  
22 part of the bedrock at a depth of 100, 110 feet  
23 possibly.

24 So--but there is a well on the site. The

1 well has a low productivity, likely in the range of  
2 less than 5 gallons per minute, so it's a marginal well  
3 as far as productivity is concerned. It also appears  
4 to be a high sulfur type well or one that has a lot of  
5 dissolved materials in it, giving it a strong taste.  
6 And my understanding is that the Gary Development  
7 Facility, it's not used as drinking water, it's used  
8 for flushed toilets and just general water in the shop.

9 Q The State's order discussing the  
10 permeabilities that they desire to exist in the liner,  
11 the wall liner at the landfill facility talked about,  
12 and I read it to you, about the concern for  
13 infiltration into the landfill. Is that a concern more  
14 than the opposite? Than liquid moving out of the  
15 landfill?

16 A Well in this particular case it's of greater  
17 concern because of the fact that the river is adjacent  
18 to the landfill and the water table is only 5 feet  
19 below the ground surface, and it's in sandy material.  
20 So it wouldn't--because you excavate a hole, the water  
21 would tend to move into the hole. So infiltration to  
22 the opening would be a very important consideration.  
23 Therefore, in order to insure the fact that the trash  
24 isn't saturated with water from the surrounding

1 terrain, it would be necessary to build a liner to  
2 prevent the water from flowing inward. So that is the  
3 major concern for this site, is to prevent surrounding  
4 water to flow into the landfill to saturate it, which  
5 would tend to generate more leachate when you get more  
6 water mixed with it and by dissolving material in the  
7 solid waste. And you want to minimize that particular  
8 amount volume of leachate, so you would prevent  
9 infiltration. That's the reason, yes.

10 Q Does this site have what are known as  
11 monitoring wells regarding ground water?

12 A Yes. It has four monitoring wells on each  
13 side of the landfill: On the north side and on the  
14 east side, south side and on the west side it has the  
15 four monitoring wells that were placed around the  
16 landfill boundary. They are located outside of the  
17 clay liner so that they would measure the water  
18 that's--it's away from the landfill; either water that  
19 got away from the landfill or exists away from the  
20 landfill. So it's measuring the surrounding terrain,  
21 not, obviously, the water within the landfill,  
22 landfilled material itself.

23 Q Are those monitoring wells actually sampled  
24 and the sample analyzed for certain types of chemicals?

1           A     Yes. According to the permit that the Gary  
2 Development Landfill is operating under, which dates  
3 back I think to the early 1980s, they are sampling it  
4 on a quarterly basis, and the samples are analyzed for  
5 the four constituents which were required under their  
6 regulations. And so they have been, yes, have been  
7 tested on a quarterly basis.

8           Q     Do you know who does the analysis for the  
9 parameters?

10          A     I think it's the Lake County Health  
11 Department if I recall. That's--I don't know. Perhaps  
12 I don't know. It's a facility, it's a public facility  
13 in the area.

14          Q     Okay. Have you reviewed the analytical  
15 results from those wells that are done for 1990? For  
16 this year?

17          A     Yes I have.

18          Q     And do you have an opinion as to what they do  
19 or do not show?

20          A     Yes I have an opinion.

21          Q     What is your opinion?

22          A     I am impressed by the fact that the chloride  
23 content is really quite low in the wells. The chloride  
24 is--if chloride is--can be an indicator of movement of

1 leachate material and the chloride is in I think the 10  
2 to 15 parts per million range. So that is encouraging  
3 in that it tends to suggest that there appears to be no  
4 indication of chloride leachate effects that are moving  
5 through the liner. It has a relatively high total  
6 dissolved solids, but that would be indicative of  
7 probably the background ground water in this particular  
8 industrial area, and so that doesn't appear to be any  
9 major consequence on the basis of this particular site.

10 Q Why is chloride an important parameter to  
11 look for regarding a sanitary landfill?

12 A Well although chloride in itself typically is  
13 not a problem material, although usually the standard  
14 for chloride is something like 250 parts per million or  
15 milligrams per liter, it is a secondary material and it  
16 is an indicator of other movement of leachate material  
17 in some cases. The reason being is that chloride has a  
18 very high solubility; it is easily dissolved in water.  
19 And secondly, it's a very abundant, profuse amount of  
20 material that's present in garbage and trash and it is  
21 not easily removed by passing through the soil. So  
22 consequently, even though the chloride might not be the  
23 ion that you would be the most concerned about as far  
24 as a health aspect is concerned, it is a good

1 indicator. It is a good target material indicating  
2 that contamination is taking place if you should see a  
3 very high elevated value for the chloride content.

4 Q And based upon your review of the laboratory  
5 analysis for that chemical and the others, is it your  
6 opinion that you don't see really any migration of  
7 leachate?

8 A Based on the information that I have of those  
9 three monitoring wells--and I see now it is the Lake  
10 County Health Department Laboratory--based on that  
11 information, I see no indication of leachate migration  
12 outside of the clay liner based on this data.

13 Q Dr. West, when you were at the site, how long  
14 did you spend out there? Can you recall approximately?

15 A This last time when I was there on the 12th  
16 of this month, I was on the site for approximately two  
17 and one-half hours. I spent the first part of the  
18 period talking to Mr. Larry Hagen and--because it had  
19 been several years since I was on the site and I wanted  
20 to talk with him to get some background information  
21 that had occurred since I had been there last, and then  
22 the last hour and a half I'd say was spent looking at  
23 the landfill on foot and by vehicle, touring the whole  
24 landfill and seeing what the situation was. So I would

1 say an hour and a half to two hours possibly spent  
2 actually on the landfill surface itself and walking  
3 around the adjacent location.

4 Q During the other times you were there, which  
5 I think were 1987 on two occasions you indicated, did  
6 you spend similar amounts of time on both of those  
7 occasions, or do you recall?

8 A I think the first time I was there I even  
9 spent a longer period of time on the landfill itself,  
10 maybe an hour, an hour and a half longer. So perhaps  
11 something like 3 hours looking around the first time,  
12 because my being there the first opportunity I wanted  
13 to spend some time carefully looking at things. The  
14 second time I was there I spent less time because a  
15 portion of the visit was spent discussing general  
16 aspects with Mr. Cooper and Mr. Warner, and probably  
17 was only on the landfill maybe 45 minutes or so.

18 Q Okay. On December 13th, I believe the day  
19 was you gave when you were out there and when you  
20 walked the site, was the site operating as a solid  
21 waste disposal facility?

22 A I think it was December the 12th, which would  
23 have been Wednesday of last week. I--the facility was  
24 not operating. The only--there was some activity going

1 on. There was a piece of equipment, a bulldozer  
2 pushing soil around--clay material was being pushed  
3 over the top of a portion of the landfill. There was  
4 no filling operation, there was no trash coming into  
5 the landfill. But there was an activity of placing  
6 cover over a portion of the landfill.

7 Q Okay. What is the present status of the  
8 facility as far as from an operational standpoint?

9 A At the end of August of 1989, the landfill  
10 closed its operation as far as accepting solid waste  
11 material and has not accepted any waste since that  
12 particular time. So for the last 18 months or so it's  
13 been in the process of having clay brought in from out  
14 off the site because there is no more availability of  
15 excavating clay on the site on the present  
16 circumstances, and so clay is being brought in from off  
17 site and deposited on top of the landfill and then  
18 moved around with earth moving equipment in order to  
19 complete the needed cover for the landfill.

20 Q Do you know what type of cover the state is  
21 requiring?

22 A My understanding the state is going require  
23 two feet of clay over the top of the conventional part  
24 of the landfill, which would be that consisting of the

1 conventional waste and trash and garbage material. I  
2 also understand that through the special portion of the  
3 landfill in which flyash was mixed with the trash and  
4 allowed to harden, that there is an agreement which  
5 allows for only one foot of clay to be required over  
6 that particular portion of the landfill. So that is my  
7 understanding based on the two different kinds of  
8 materials, a different amount of clay would be placed  
9 over the top of those.

10 Q The area where you mentioned flyash was mixed  
11 with waste and allowed to harden, approximately what  
12 percentage, if you know, of the site is that area? The  
13 flyash area let's call it.

14 A Well it's--the flyash area is located on the  
15 eastern part of the site, and I would estimate it to  
16 make up perhaps about a fifth of the site, so say about  
17 20 percent.

18 Q When you were at the landfill recently, did  
19 you actually personally observe the clay, piles of clay  
20 and equipment moving clay cover onto the facility?

21 A Yes I did. There was a pile of clay that was  
22 being moved around. Although it was a little bit wet,  
23 the dozer was working that day and was pushing the  
24 material around. I could see an area where the clay

1        had been recently placed in, it looked to be in about  
2        the east central part of the landfill. And I could  
3        also observe other areas where clay was yet to be  
4        placed, more to the western side of the landfill.

5            Q        Okay. As an expert, did you view anything at  
6        the landfill facility recently when you were out there  
7        that you considered to be a problem?

8            A        Yes. I would say that the area of the north  
9        pit is at least a strong concern, perhaps a problem in  
10       that it is left unconstructed. It is a sizable pit  
11       that is along the northern boundary of the landfill  
12       that I estimated to be about perhaps 900 feet long, 40  
13       feet deep, and approximately 150 feet wide, such that  
14       by rough calculation it turns up to be maybe 200,000  
15       cubic yards of material that was still--this depression  
16       in this large pit that's located along the side. My  
17       concern for that is is that it's clear that water is  
18       running off of the Vulcan material site to the west  
19       that is able to drain onto the northwest corner of the  
20       landfill. And although there is a soil dike that's  
21       been constructed there, it's able to seep through there  
22       or possibly top that dike and pour into that pit and  
23       collect water down into this pit of area where the  
24       trash has not been placed. Because of that, water

1 accumulates in that particular pit and has to be pumped  
2 out of there to prevent it from accumulating too much.

3 So I saw that as a problem, the fact that the  
4 Vulcan material site has a culvert that drains  
5 immediately into the area adjacent to that and runs  
6 into that pit. And that is a concern to me that that  
7 area has not been filled in, that solid waste has not  
8 been placed in that particular large pit.

9 Q What is Vulcan Chemical or Vulcan materials?  
10 Can you explain what that is?

11 A I guess Vulcan Chemical is a proper name for  
12 it originally. It has now changed to AMG Resources,  
13 which has recently bought our the Vulcan site.

14 It is a scrap metal facility that removes tin  
15 and removes other metals from scrap iron and scrap  
16 steel and processes it by adding acids and other type  
17 of corrosive materials to the metal to remove the trace  
18 metals from it. In the process of that, they have a  
19 lot of scrap metal that's sitting around on the eastern  
20 part of their site, which is right adjacent to our  
21 particular location at Gary Development site. In fact,  
22 along the western part of the site they have some scrap  
23 metal that sits directly into a drainage ditch and is  
24 in contact with water on the Gary Development site and

1 clearly could obtain metals from that scrap and get  
2 onto the Gary Development site in the process. So my  
3 concern is is the fact that it is adjacent to the  
4 landfill, it is a higher elevation than the drainage  
5 ditch and the pit itself. Water can run off of that  
6 particular salvage yard and get into the waters on the  
7 site of Gary Development.

8 Q You termed the phrase, I guess, or you termed  
9 the existing circumstance out there as a pit.  
10 Basically, can you more describe--what is this? Is  
11 this something that is dug? Is this something that is  
12 remaining because waste was not disposed of?

13 A Yes, that's the nature of it. The waste was  
14 not disposed along the north wall of the landfill.  
15 This was done purposely because of the fact that  
16 permission was not obtained from the State of Indiana  
17 to fill that particular part of the landfill.

18 The procedure was to place clay up against  
19 the sand, exposed sand sides of the landfill, of the  
20 old sand and gravel pit. Now a small amount of clay  
21 had been placed there, but not the final clay thickness  
22 had been done. And my understanding is is that full  
23 permission to fill in that particular pit was withheld  
24 from Gary Development because of--there was no decision

1     made or no judgement made as to how that should be  
2     accomplished as far as the Department of Environmental  
3     Management of the State of Indiana. So consequently,  
4     that area was left unfilled and left that way at the  
5     end of the process of the Gary Development site. So  
6     when they closed in August of 1989, they had not placed  
7     material in that particular pit area because they were  
8     restricted from doing such by the regulations of the  
9     State of Indiana, or at least lacking permission from  
10    the state to do so.

11           Q     Do you know whether at that time Gary  
12    Development requested a variance or authority to  
13    complete that area from the Indiana Department of  
14    Environmental Management?

15           A     Yes. It's my understanding that shortly  
16    before they actually closed in August of '89 they did  
17    make a request for a variance to proceed to fill that  
18    pit in with solid waste material. But having a  
19    variance such that they would fill it under the rules  
20    existing prior to August of '89, and not under the  
21    regulations which have since come into account. So  
22    that would have been a period of perhaps almost 18 to  
23    20 months ago that this request for variance was made,  
24    but there's been no decision forthcoming from the State

1 of Indiana Department of Environmental Management since  
2 that time.

3 Q When you were out at the landfill recently,  
4 did you review any inspection reports that were  
5 apparently done by the Indiana Department of  
6 Environmental Management on this site?

7 A Yes I did.

8 Q Okay. Do you recall what type of inspection  
9 reports those were?

10 A Yes. Those are the latest edition of the  
11 inspection reports that are used for conventional  
12 standard solid waste landfill inspections. They're the  
13 variety that is used for all the other conventional  
14 landfills in the State of Indiana. I noted with  
15 interest because those particular forms have gone  
16 through several additions over the last year or so and  
17 so some of the details are different from one month to  
18 the next it appears. But I looked at those carefully  
19 and I noted that they were the conventional solid waste  
20 regulation forms that were used.

21 Q Did the state inspectors at all, on reviewing  
22 those reports, discuss the covering of the landfill  
23 with the clay material?

24 A Yes. That was an item that they did list.

1 They indicated that the clays were being added to a  
2 portion of the landfill, that the clay cover was being  
3 placed over a portion of it. They made a note of the  
4 fact that they could see that additional clay was  
5 needed further to the western part of the site. There  
6 was a notation made that part of the area did not have  
7 sufficient clay on it and it needed to have the two  
8 feet of clay placed. And there was also a statement  
9 relative to the flyash material; the fact that a  
10 sizeable portion had flyash at the surface and needed  
11 to be covered as well. So that was part of the  
12 evaluation that was made, yes.

13 Q In reviewing the inspection reports that you  
14 looked at at the landfill facility a week or so ago,  
15 did you see any reports where the state had inspected  
16 this facility as a resource conservation and recovery  
17 site?

18 A No. There was no indication that this was  
19 reviewed from the RCRA point of view. It was strictly  
20 conventional solid waste landfill evaluation.

21 Q Dr. West, could you explain to me briefly  
22 what the difference is--you indicated that I think you  
23 classified yourself as a hydrogeologist. What is the  
24 difference between a hydrogeologist and a hydrologist?

1           A     Yes. The hydrogeology is one of the areas  
2 that I operate in; one of my areas of expertise. I  
3 also mentioned engineering geology, which is a  
4 combination of geology and engineering construction.

5                 Relative to the two terms you mentioned, a  
6 hydrogeologist is a geologist who works with water  
7 typically, almost to a great extent, groundwater. Does  
8 a lot of work with groundwater studies. The term  
9 hydrology or hydrologist more often or typically is a  
10 civil engineering person and almost most of their work  
11 has to do with surface water. So we have a distinction  
12 from the hydrologist, who is more of a surface water  
13 person, typically a civil engineer, and a  
14 hydrogeologist, who is a geological person, who  
15 typically does more groundwater.

16                Now there is a little bit of an overlap  
17 between them, but the specific areas are still quite  
18 clear. The hydrogeologist as a geological person,  
19 tends to know a great deal more about the subsurface,  
20 the movement of water through the ground, whereas  
21 hydrologists deal more with floods and flood routing  
22 and being able to build structures sufficiently high  
23 that they don't get flooded out and deal with the  
24 aspects of flooding and flood plane management, things

1 of that sort. So there is a distinction between the  
2 two.

3 Q The problem that you've discussed in your  
4 opinion, the problem at the site, the pit or the hole  
5 where waste was not filled, do you have an opinion as  
6 to how that could be handled from an environmental  
7 standpoint, that in your opinion, would be  
8 environmentally sound?

9 A Yes I do. I have an opinion on that.

10 Q And what would that be?

11 A I think the primary need is to insure the  
12 fact that the clay and the liner on the north side is  
13 sufficiently thick to keep water from coming out into  
14 the pit, and equally sufficiently thick to stop water  
15 from migrating from the landfill to the liner and  
16 getting out into the surrounding terrain. So it's  
17 necessary to have a properly compacted liner placed in  
18 that area, really pretty much similar to the liner that  
19 has been placed in other parts of the landfill. I  
20 think with today's standards we can compact the clay  
21 sufficiently so that you would get the low permeability  
22 effects. There are some construction techniques that  
23 would tend to insure the fact permeability would be  
24 quite low, and that would be how I would go about

1 constructing it.

2 In order to do that, of course, you have to  
3 drain the water out of it, you have to find a way to  
4 keep the water out of it. It's very difficult to  
5 construct things when you have water accumulating in  
6 them, in the construction business it's called  
7 operating in the dry, which means you've got to get the  
8 water out before you can do good construction work. So  
9 consequently, there would be a combination of keeping  
10 the water from the Vulcan materials area from washing  
11 into that hole, and also, from building up a compacted  
12 clay liner to insure the fact that water will not  
13 neither seep into it, nor seep away.

14 Q Dr. West, do you have any economic interest  
15 in Gary Development Company, Inc?

16 A No I don't.

17 Q You're not an employee of the company?

18 A No I'm not.

19 Q Okay. You are--indicated you are employed by  
20 Purdue University. Do you also do private consulting  
21 work?

22 A Yes. I have been an active private  
23 consultant essentially since I received my Ph.D. in  
24 1966, so I've been actively involved in different

1 aspects of construction related geology for lo 25 years  
2 now. I think it's particularly significant in my own  
3 field of applied geology because it helps me to direct  
4 graduate students in areas of research, and it helps me  
5 to determine the areas where research needs to be done  
6 and leads me to research funding and things of that  
7 sort. So it's been an extremely good marriage over the  
8 years for me to be related directly to construction  
9 aspects.

10 And for the last 15 years, this has included  
11 sanitary landfills. I have not exclusive worked  
12 neither for nor in opposition to sanitary landfill  
13 construction. I have, on numerous occasions worked for  
14 citizens groups and tried to point out problems with  
15 proposed landfills and with the approach that the best  
16 way to reduce the problems of landfills is to make sure  
17 the construction is done as best as possible. And I  
18 worked for landfill firms themselves, so I have not  
19 been exclusively either pro or con as far as the  
20 landfill construction business is concerned. And  
21 consequently, I feel that it's been a valuable  
22 contribution insofar as what I've been able to  
23 contribute in the construction aspect, and also of  
24 course, things I've learned for my students to be able

1 to work on these projects.

2 Q With these private clients, do you charge  
3 them on a results type fee, or do you charge them on an  
4 hourly basis regardless of the result?

5 A I charge then on an hourly basis that's not  
6 related to the results. I've had a couple of difficult  
7 times, I must say, with a small country attorney one  
8 time who felt that I should only get paid if he won the  
9 case. And I told him, well that may be the way that  
10 attorneys work, but engineers and geologists don't work  
11 that way. And consequently, if they couldn't give me a  
12 retainer, I would not be interested in the project.  
13 And so fortunately we came to an agreement on that and  
14 I didn't have to wait six months or nine months to see  
15 what the outcome of the case was going to be.

16 Q In addition to private clientele, have you  
17 done any consulting work for any governmental entities?

18 A Yes I have. I have worked for some  
19 governmental entities, yes.

20 Q And can you tell us which ones?

21 A I have done some projects which basically I  
22 would assume would relate back to the federal  
23 government, but through an independent firm that wanted  
24 a review of some design projects, so I'd say for the

1 U.S. Government I've done some work.

2 Q Okay. Have you done anything for the Indiana  
3 Department of Natural Resources?

4 A Yes I have. I have had a research contract  
5 or research related project with the Indiana Department  
6 of Natural Resources, the Division of Reclamation for  
7 about five years now. This turns out to be a very  
8 closely related area, strangely enough, to sanitary  
9 landfills is the reclamation of old strip mines in  
10 southern Indiana. The groundwater contamination  
11 problems from strip mines and mine processing wastes is  
12 very similar in a way to what happens with sanitary  
13 landfills because you get movement of heavy metals and  
14 the movement of cations and things and sometimes  
15 hydrocarbons, which is related to the same geological  
16 detail. And of course the background of subsurface  
17 work is drilling and exploration and developing  
18 geological detail. And the two of them go very closely  
19 together. Yes.

20 MR. KREBS: Your Honor, may I have a moment?  
21 I think I'm finished with this witness. I wanted to  
22 review my notes if I could.

23 THE COURT: Yes.

24 (Pause.)

1 THE COURT: Dr. West, when your testimony has  
2 finished, would you consult with the court reporter and  
3 assist her with any spellings she may need?

4 THE WITNESS: Certainly.

5 THE COURT: Such as Racine Dolomite, silurian  
6 age.

7 THE WITNESS: Yes I will.

8 THE COURT: We want to make sure these are  
9 spelled correctly for the record. Cations.

10 THE WITNESS: Silurian is an old English name  
11 that comes out of England.

12 MR. KREBS: Your Honor, that's all the direct  
13 questions we have at this time.

14 THE COURT: Mr. Radell?

15 MR. RADELL: Yes.

16 CROSS-EXAMINATION

17 BY MR. RADELL:

18 Q Dr. West, are you familiar with the state and  
19 federal laws and regulations for hazardous waste?

20 A Yes, to some extent I am.

21 Q Have you designed any hazardous waste  
22 landfills?

23 A Yes, I've been involved in some of that. I  
24 was instrumental in working through a Part B

1 application for hazardous waste landfill in the  
2 mid-1980s. I have reviewed a number of hazardous waste  
3 landfill designs. I have contributed to some of them  
4 as well.

5 Q Can you say that the Gary Development  
6 Company's landfill meets--was designed to accept  
7 hazardous wastes and to comply with federal and state  
8 laws for hazardous waste landfills?

9 A Well it would certainly be under the current  
10 conditions that we have at the present time. The  
11 regulations for hazardous waste landfills, has changed  
12 markedly over the last 5 or 6, 10 years. But I don't  
13 believe it was designed to be a hazardous waste  
14 landfill. My understanding is that they were under the  
15 assumption that it is a conventional landfill.

16 Q Uh-huh. Does the Gary Development Landfill  
17 have a double liner underneath it?

18 A Well double liner systems have been involved  
19 for hazardous waste landfills, perhaps since the 1980s.  
20 Of course this landfill predates that particular time.  
21 But double liner systems are typical of landfills and  
22 in fact, they are now becoming more apparent when we  
23 get conventional landfills, so that the landfill design  
24 procedure has certainly gotten more stringent as time

1 has gone on. We have, you know, what I see in the  
2 landfill business, you have a lot of landfills that  
3 were constructed a number of years ago and under  
4 different regulations and there's really no way to  
5 retrofit a situation of that sort.

6 Q Uh-huh.

7 A So I would say it does not have a double  
8 liner system in it. No, it doesn't.

9 Q Okay.

10 A It has a clay liner. It has a very sizable  
11 base clay liner. The sides are obviously not as thick  
12 as the base is though.

13 Q Uh-huh. Does it have any kind of a leachate  
14 collection system?

15 A No, it doesn't have a leachate collection  
16 system.

17 Q Okay. Regarding the groundwater monitoring  
18 system in place at the Gary Development Landfill, do  
19 you know if that meets the RCRA hazardous waste  
20 requirements for groundwater monitoring systems?

21 A I would assume that it would not. The RCRA  
22 requirements are typically much more stringent than  
23 they are for conventional landfills, and this has the  
24 monitoring system that was required of a conventional

1 landfill back in the early 1980s. So it would be a  
2 surprise if it would qualify for that, yes.

3 Q Are you familiar with the ways in which the  
4 existing groundwater monitoring wells were actually  
5 constructed?

6 A Well I am aware of the fact that they were  
7 placed, as I say, I think in the early 1980s and they  
8 were done sort of in the fashion that was typical of  
9 monitoring wells at that particular time. I know of a  
10 number of landfills when this actually occurred.

11 In the State of Indiana, you find that the  
12 regulatory agency and the landfill operators sort of  
13 grew up together in their educational process, and so  
14 they would be somewhat typical of early monitoring  
15 wells that were put in conventional landfills in the  
16 State of Indiana.

17 Q So do you know whether those wells were  
18 constructed in a manner so that they would currently  
19 meet RCRA hazardous waste regulations for monitoring  
20 wells?

21 A I'd assume that they would not meet the  
22 regulations. The regulations for monitoring wells  
23 today are much more stringent than they were in the  
24 1980s.

1           Q     Are you aware if any hazardous constituents  
2     have ever been tested for in the groundwater at the  
3     Gary Development Facility?

4           A     I know that the State of Indiana took some  
5     split sample testing out of the monitoring wells in the  
6     past. I don't recall what the results of that would  
7     happen to be.

8           Q     Uh-huh.

9           A     And if--I assume they would have tested for  
10    some things which would perhaps be more similar to the  
11    hazardous waste list that is currently tested for  
12    today.

13          Q     Uh-huh.

14          A     But I don't happen to remember the results  
15    from that.

16          Q     Okay. Based upon your familiarity with the  
17    Gary Development site, can you express an opinion  
18    whether or not any hazardous constituents have migrated  
19    into the groundwater from that facility?

20          A     I have no knowledge that any have. But as I  
21    say, I'm limited to the information from the four  
22    monitoring wells, which were done on a quarterly basis  
23    there.

24          Q     Regarding the existing barriers that are in

1. effect now for keeping water from migrating into and  
2 out of the landfill, would you say that the existing  
3 barriers are effective in keeping water, stopping water  
4 from migrating in and out of the landfill, or other  
5 liquids?

6 A Well they appear to be, perhaps for the north  
7 wall. There is some indication along the north wall,  
8 which has not been completed of course, that there is  
9 some groundwater seepage that's coming into that.

10 I know a statement was made in one of the  
11 review reports that they had observed leachate coming  
12 out of the side of the pills of the landfill and the  
13 inspector made some comment that that indicated that  
14 the clay liner wasn't working. And I had to scratch my  
15 head at that, because that's not where the clay liner  
16 is. The clay liner is below the ground, not above the  
17 ground. So if you see leachate coming out of the  
18 landfill, that doesn't mean that the clay liner is not  
19 working. I don't know how one would determine that the  
20 clay liner is not working because the clay liner is all  
21 covered up. Only the fact that was drilled in four  
22 places and it's permeability turned out to be one  
23 hundredth or one-two hundredth less than what its  
24 requirement was, which would suggest that it operates

1 as though it was 100 times thicker than if the  
2 landfill--than the liner would have had to be under the  
3 specific requirements.

4 Q Are there any types of piezometers or other  
5 wells that would locate both inside and outside the  
6 fill on either sides of the existing barriers that  
7 would enable one to determine the comparative levels of  
8 water in and outside the landfill?

9 A Well yes. One could put a piezometer inside  
10 of the landfill and determine what the water level is  
11 in the trash material. That would tell you what the  
12 water level is. It doesn't necessarily tell you that  
13 it's moving anywhere, it just tells you that there's a  
14 gradient from inside the landfill to the outside. But  
15 a gradient does not necessarily determine that you have  
16 movement; you have a potential for movement. If the  
17 clay is doing its job, then the difference would still  
18 persist and the water would get out of the landfill by  
19 some other method, perhaps by evaporation or some other  
20 procedure whereby the water would disappear without  
21 going through the liner. So the fact that you show a  
22 difference in water level inside and outside the liner  
23 doesn't show that it's necessarily moving through the  
24 liner. It only shows that you have a gradient in that

1 direction.

2 Q Are there any such piezometers in place now  
3 inside the fill?

4 A Not to my knowledge. I don't know that it  
5 was ever suggest that they be placed there. I'm not  
6 aware of that.

7 Q Mr. Krebs had alluded earlier to some reports  
8 by the Lake County Health Department Laboratory  
9 regarding--you referred to the chloride levels that  
10 were taken from these reports. One report that was  
11 dated November 14, 1990 states that, "no samples were  
12 taken from the west wall area because it was flooded."  
13 I was wondering if you had any knowledge how that area  
14 came to be flooded and how such a flooding might affect  
15 leachate passing into or out of the landfill.

16 A Well now that his indicated both for the  
17 November 14th and the August 3 test that the west  
18 monitoring well was not measured because it was  
19 flooded. And I happened to observe that area on the  
20 western side of the landfill. It still has a  
21 considerable amount of water sitting in that particular  
22 ditch. In fact, that was the reason why the delay took  
23 place before they could drill the liner on the west  
24 side of the landfill because the water has persisted

1       there for some time. It runs off the Vulcan site and  
2       ends up in that particular ditch.

3               The problem obviously is is the water builds  
4       up in there and it doesn't have a good way to drain  
5       away. It is prevented from draining to the south and  
6       toward the river, and in fact, you don't want it to  
7       drain to the north into the pit. So there's an attempt  
8       made to keep the water in that particular location. I  
9       would think there needs to be a long term, or maybe  
10      it's a short term solution of removing the water from  
11      that particular ditch and get it to drain away from  
12      there, hopefully into the Grand Calumet River.

13           Q       Uh-huh. Are you familiar with the RCRA  
14      hazardous waste inspections which the Indiana  
15      Department of Environmental Management conducted at  
16      Gary Development Company on April 26, 1988 and June 6,  
17      1990?

18           A       Who was the inspector on that?

19           Q       Ted Warner.

20           A       I recall seeing a report that indicated that  
21      Ted Warner had made an inspection on the site and I  
22      recall something to the effect of him making a  
23      statement in his report that this didn't meet hazardous  
24      waste requirements for a landfill. So I have seen

1 that, yes.

2 Q Alright. And regarding Cause 53, the state  
3 agreed order, are you--do you know whether or not that  
4 dealt with hazardous waste, or was that just for solid  
5 waste that was non-hazardous?

6 A I think that order dealt with conventional  
7 solid waste material and not with hazardous waste.

8 MR. RADELL: Alright. Thank you.

9 THE COURT: Mr. Krebs, redirect?

10 MR. KREBS: I have no redirect, Your Honor.

11 THE COURT: Well Dr. West, it appears that  
12 your testimony is at an end. Thank you very much for  
13 coming. You are excused and you may step down.

14 THE WITNESS: Thank you, Judge Greene.

15 (Whereupon, the witness was  
16 excused.)

17 THE COURT: Now then, if there are other  
18 witnesses that are here, if you have anything further  
19 you wish to do.

20 MR. KREBS: Yes Your Honor, there is. And I  
21 decide whether to do this or not, I'm going to, going  
22 to. I guess this would be considered an admission  
23 against interest, so look at these for awhile.

24 I have two documents here where are recent,

1 last this year. Both of them are signed by the  
2 Commissioner of the Indiana Department of Environmental  
3 Management, Kathy Prosser (ph), and both relating to  
4 Gary Development. They are--one is an emergency order  
5 of the Commissioner, which is dated October 16th this  
6 year, the other is an agreed order signed by the  
7 Commissioner on October 11, 1990. And I offer these  
8 into evidence even though these documents do discuss--  
9 one of them discusses a fine being levied by the state  
10 against my client, one of them discusses the  
11 possibility or an allegation of a leachate problem.

12 The purpose that I am offering these  
13 documents into evidence is the fact I think they will  
14 show the State of Indiana considers this facility to be  
15 a "sanitary landfill" and not a RCRA facility. And  
16 that's how it has been classified by the State of  
17 Indiana.

18 THE COURT: I have it you are offering these.  
19 Mr. Radell?

20 MR. RADELL: I would like a chance to review  
21 them if I may.

22 MR. KREBS: In fact, if he would--if we would  
23 want to decide on this tomorrow morning, that's fine  
24 with me also. If he needs more time to look at them.

1 THE COURT: Well yes, and we may have that  
2 time since you don't have another witness ready to go.

3 MR. KREBS: Alright. The next witness is  
4 subpoenaed for 9:00 a.m.

5 THE COURT: Yes.

6 (Pause.)

7 MR. RADELL: Mr. Krebs, we had a  
8 Kathy Schmidt the last time we met. Could this be the  
9 same as the original Prosser? Did she marry or  
10 something? Unusual to have the same--

11 THE COURT: I don't believe so.

12 MR. KREBS: I believe Katherine--or a Schmidt  
13 is a geologist in the water department for IDEM.

14 THE COURT: Carol Schmidt.

15 MR. RADELL: Carol Schmidt.

16 VOICE: Carol Schmidt is the chief geologist  
17 at the IDEM. Kathy Prosser is the new head of the  
18 section, recently appointed by--

19 THE COURT: Thank you.

20 MR. KREBS: Perhaps it would be appropriate  
21 for me to identify these now for the record?

22 THE COURT: Yes.

23 MR. KREBS: For tomorrow. There will be one  
24 document so marked by the court reporter as

1 Respondent's Exhibit 16. Here is a certification of  
2 authentication of public records on the front and the  
3 document is the emergency order of the Commissioner,  
4 with a date on the third page of October 16, 1990.

5 (Whereupon, Respondent's  
6 Exhibit 16 was marked for  
7 identification.)

8 MR. KREBS: The second document is  
9 Respondent's Exhibit #17, also has a certificate of  
10 authentication of public records on the front, and it  
11 is a three-page document that is entitled, "RE: Order"  
12 and has a signature by the Commissioner of the Indiana  
13 Department of Environmental Management, with the date  
14 of October 11, 1990.

15 (Whereupon, Respondent's  
16 Exhibit 17 was marked for  
17 identification.)

18 MR. RADELL: Your Honor, I think I'm going to  
19 object to the admission of these documents just based  
20 on irrelevancy, because neither of these has to do with  
21 whether or not the facility is a RCRA hazardous waste  
22 facility or a solid waste facility. One deals with  
23 violations of the Water Pollution Control Act, and the  
24 other the Clean Air Act, and neither document has any

1 relevancy to whether or not hazardous waste is indeed  
2 in this landfill.

3 THE COURT: Well since I haven't had a look  
4 at them myself, what I will do is--

5 (Pause.)

6 THE COURT: Does somebody have copies of  
7 these, or is this the only copy?

8 MR. KREBS: I beg your pardon?

9 THE COURT: Are there extra copies of these  
10 two documents?

11 MR. KREBS: Yes. Yes.

12 THE COURT: And Mr. Radell has a copy of  
13 each?

14 MR. RADELL: Yes.

15 THE COURT: Well I'll allow them. Number 16  
16 and 17 for the Respondent are admitted.

17 (Whereupon, Respondent's  
18 Exhibits 16 and 17 are  
19 received into the record as  
20 evidence.)

21 MR. RADELL: Which is 16 and which is 17?

22 THE COURT: 16 is the October 29, 1990  
23 emergency order admission.

24 MR. RADELL: Okay.

1 THE COURT: And number 17 is the RE: Order.  
2 Off the record a moment.

3 (Whereupon, the reporter went  
4 off the record as requested.)

5 THE COURT: On the record please.

6 The next witness having been subpoenaed for  
7 9:00 tomorrow morning, and the hour growing late here,  
8 we will recess for the day until 9:00 tomorrow morning.

9 (WHEREUPON, THE HEARING WAS ADJOURNED AT  
10 3:30 P.M. TO BE RECONVENED ON TUESDAY,  
11 DECEMBER 18, 1990 AT 9:00 A.M.)  
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, ANNE I. MAZIORKA, a Notary Public within and for the County of Cook and State of Illinois do hereby certify:

That previous to the commencement of the examination of the witnesses, the witnesses were duly sworn to testify the whole truth concerning the matters herein;

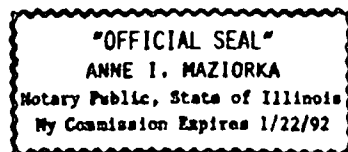
That the foregoing transcript was reported to me by electronic audio sound recording, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given;

That the said hearing was taken before me at the time and place specified;

That the hearing was adjourned as stated herein;

That I am not a relative or employee or attorney or counsel, not a relative or employee of such attorney or counsel for any of the parties hereto, not interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand and affix my seal of office at Chicago, Illinois, this 31<sup>st</sup> day of December, 1990.



*Anne I. Maziorka*  
ANNE I. MAZIORKA  
Notary Public, Cook County, IL

My Commission expires 1/22/92.